

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

CLARK LANDIS, ROBERT BARKER,)
GRADY THOMPSON, and KAYLA BROWN,) CASE NO. C18-01512-BJR
)
Plaintiffs,) SEATTLE, WASHINGTON
)
v.) October 16, 2019
) 10:00 a.m.
WASHINGTON STATE MAJOR LEAGUE)
BASEBALL STADIUM PUBLIC) BENCH TRIAL, Day 2 of 4
FACILITIES DISTRICT, BASEBALL)
OF SEATTLE, INC., a Washington)
corporation, MARINERS)
BASEBALL, LLC, a Washington)
limited liability company, and)
THE BASEBALLCLUB OF SEATTLE,)
LLP, a Washington limited)
liability partnership,)
)
Defendants.)

**VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE**

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1 PROCEEDINGS
2

3 THE COURT: Good morning, all.

4 MR. WILLEY: Good morning, Your Honor.

5 THE COURT: Have we lost a witness? Mr. Terry?

6 MR. CONNOR: Your Honor, I had anticipated we'd
7 discuss with you what you'd asked us to think about last
8 night in terms of how the trial will proceed. If you'd like
9 to just begin with Mr. Terry, I'll put him up there.

10 THE COURT: Do you need to discuss that now, or what
11 are you thinking?

12 MR. CONNOR: No, I was trying to respond to what the
13 court had requested last night.

14 THE COURT: No. Let's go ahead with Mr. Terry.

15 MR. CONNOR: Okay. Thank you, Your Honor.

16 THE COURT: Good morning.

17 THE WITNESS: Good morning.

18 JAMES TERRY,

HAVING BEEN PREVIOUSLY SWORN,
TESTIFIED AS FOLLOWS:

19
20 DIRECT EXAMINATION (continued)

21 BY MR. CONNOR:

22 Q Mr. Terry, I don't want to burden the court and repeat
23 things we discussed yesterday, but I had noted last night
24 that there was something that I wanted to make sure we
25 clarified for the court, and that was regarding exhibits

1 which included -- I believe they began on Exhibit 16,
2 Plaintiffs' Exhibit 16, and proceeded through Exhibit 25.

3 I wanted to talk to you about something that I don't
4 know if it was clear yesterday, and that was where the
5 cameras were located in those varies pictures. And these are
6 the pictures that pertained to the scoreboard. Okay? So
7 let's just go through them quickly, if we could.

8 Could you look at Exhibit 16, which is up?

9 A I have it.

10 Q Okay.

11 Mr. Terry, on this picture, was what the location of
12 the camera with regard to the comparable spectator view?

13 A It was Section 129, Row 40, Seat 18, and it was located at
14 the height of a standing, average-size human.

15 Q Okay. Could you look at the next exhibit, which is 17?

16 Can you tell us where the height of the comparable
17 spectator view is taken on that exhibit?

18 A It's in Section 135, Row 40, one row forward of the
19 wheelchair position that it's compared to, and it's in
20 Seat 1, at the height of a standing spectator.

21 Q Mr. Terry, on the caption above, it says "comparable
22 spectator view seated."

23 A Excuse me. Yes, this is a seated view.

24 Q Okay.

25 So with respect to -- these two pictures were taken

1 using different assumptions as to what the comparable
2 spectator is doing, correct?

3 A That's correct.

4 Q Okay.

5 So one reflects what a spectator who is a comparable
6 spectator would see standing, and the other is what they'd
7 see seated?

8 A Let me --

9 Q At the different locations that you've identified.

10 A If -- if the -- yeah, if it said "seated," it was seated.

11 Q Okay.

12 A The assumption was that most of the time, during a game,
13 people will be seated, that they're likely to stand the whole
14 game. So when they're seated, can they see it? Wheelchair
15 users are seated most of the game -- all of the game, and so
16 can they see it when they're seated as well.

17 Q Okay.

18 So these exhibits -- and we can look at 18, maybe,
19 next. The comparable view on Exhibit 18, in this case, was
20 taken when the spectator was standing, correct?

21 A That's correct.

22 Q And the next one, Exhibit 19, is taken when the spectator
23 is seated, correct?

24 A That's correct.

25 Q Okay.

1 And then just to complete our examination of these,
2 Exhibit 20, in that case it was a comparable view of the
3 spectator standing in the seat identified?

4 A Yes.

5 Q Okay.

6 And then in Exhibit 21, it was the view of the
7 scoreboard of the spectators. Is that standing or seated, do
8 you know?

9 A I don't recall on that one.

10 THE COURT: The trouble is, it doesn't say on the
11 exhibit.

12 THE WITNESS: I know. I don't recall --

13 THE COURT: The court's going to be looking at these
14 exhibits without you guys around --

15 THE WITNESS: I'm sorry?

16 THE COURT: -- and it's important that I --

17 MR. CONNOR: Right.

18 THE COURT: -- see what you're trying to show me.

19 MR. CONNOR: Right.

20 Q (By Mr. Connor) Mr. Terry, are you able to look at
21 anything in your notes or anything in your report that will
22 let you know whether that was taken in the seated position or
23 standing?

24 A You know, I don't -- I don't think I do.

25 Q Okay.

1 THE COURT: So the purpose of this set of exhibits
2 has to do with the scoreboard --

3 MR. CONNOR: Correct, Your Honor.

4 THE COURT: -- not with the view of the field?

5 MR. CONNOR: Correct, Your Honor.

6 THE COURT: Because it looks like the view of the
7 field is essentially the same from both seats. Am I right?

8 THE WITNESS: The -- because we don't have the
9 standing spectators --

10 THE COURT: Well -- yeah, we're not dealing with that
11 question right now.

12 THE WITNESS: Right.

13 THE COURT: We're dealing only with the scoreboard
14 question.

15 MR. CONNOR: Correct.

16 THE WITNESS: That's from about the same location.

17 MR. CONNOR: Right.

18 Q (By Mr. Connor) So, Mr. Terry, just to make clear, these
19 pictures we've just been going through don't attempt to show
20 the impact of spectators standing in front of either the
21 wheelchair patron or a standing spectator, correct?

22 A That's correct.

23 Q Okay. I wanted to clarify that.

24 MR. CONNOR: Your Honor, I don't want to ask
25 Mr. Terry questions beyond those which you'd like me to ask,

1 so I'll preface these questions with that acknowledgment.

2 In reviewing the ruling on the motion in limine, you had
3 indicated that Mr. Terry would be allowed to testify about
4 general solutions to sight-line problems that he's aware of
5 in other stadiums. So I wanted to let you know I was
6 continuing to ask him about that, and proceed if that's
7 acceptable.

8 THE COURT: Okay.

9 MR. WILLEY: Your Honor, I will reiterate my
10 objection, because it's not clear to me how any particular
11 piece of engineering or improvement at another stadium, if
12 Mr. Terry has not actually looked at whether it's feasible
13 here at all -- in other words, what's the relevance of what
14 we're talking about?

15 He's not opined about any remediation here, and he said he
16 has no basis to do so. And so what he's really doing is sort
17 of telling you what's out there in the world and asking you
18 to somehow draw the relevance, and I think that's
19 inappropriate, Your Honor.

20 THE COURT: So your purpose right now is to ask him
21 what?

22 MR. CONNOR: Your questions of Mr. Terry yesterday
23 suggested you had some concern about whether there was
24 anything that likely could be done to correct these problems.
25 I want to suggest that, while Mr. Terry did not because he

1 was not allotted time sufficient to do so in the examination
2 of the stadium because, it's not our burden, he did not try
3 to come up with specific remediation suggestions.

4 But to the extent that the court is concerned whether
5 there are likely solutions to these concerns, I was going to
6 ask him whether he's encountered similar problems such as
7 this in other facilities and whether they've been able to
8 come up with solutions. And that, I felt, was specifically
9 within the ambit of what you'd allowed me to do in the motion
10 in limine order.

11 THE COURT: Do you want to respond?

12 MR. WILLEY: I'd just like to mention two things,
13 Your Honor.

14 Number one, we are, again, not -- not talking about
15 anything that Mr. Terry has assessed with respect to this
16 stadium. And so I don't know how anything that has occurred
17 at a stadium in Arizona or New York or Madrid, built at a
18 different time by a different construction company, a
19 different business and a different stadium, has anything to
20 do with this.

21 And it strikes me that what they're trying to do, Your
22 Honor, is to back-door remediation testimony via, "Well,
23 other people have done this."

24 Secondly, with respect to timing, Mr. Terry inspected the
25 T-Mobile stadium on February 5th, 2019, and at no point after

1 that were we ever asked for additional inspection time. So
2 the concept that "I didn't have time to do it" is unavailing.

3 MR. CONNOR: I will pull up the emails between myself
4 and Mr. Willey --

5 THE COURT: Wait, wait. You're going too fast.

6 MR. CONNOR: Okay. There's a multitude of emails
7 between myself and Mr. Willey regarding the time that would
8 be allotted to Mr. Terry to review that stadium. He made it
9 categorically clear that he was not going to be allowed there
10 for more than seven hours, and that was all the time he had.

11 Your Honor, having said that, I will not have Mr. Terry
12 testify to this if the court doesn't have some concern about
13 whether something is likely able to be done.

14 I intend to present to you, by way of clarification
15 because it came up yesterday -- I did a little supplemental
16 brief on whether we have a burden of proving any remediation
17 efforts in our case-in-chief, and the answer is we absolutely
18 do not. And I have that brief right now. I'm happy to give
19 it to you.

20 I don't think I have to do that in my case. Because the
21 court, it seemed, has some general concerns about whether
22 this likely could be done, that was my purpose in asking
23 Mr. Terry whether he's encountered problems such as this
24 where they were able to remediate it.

25 THE COURT: Yeah.

1 MR. WILLEY: I have one question, Your Honor.

2 The issue in here is the phrase that Mr. Connor used:
3 "Likely to be effective." Right? That phrase indicates
4 feasibility connection, linkage to this stadium, and that is
5 completely absent here in his testimony.

6 THE COURT: I appreciate what you're doing, and I
7 appreciate the fact that my concerns at the end of the day
8 yesterday may have precipitated your wanting to do this.

9 I just don't see how it would be appropriate to have him
10 testify about things in other stadiums. We would be
11 opening -- well, opening the door to cross-examination we
12 already know, which the question is going to be, "Have you
13 looked at this stadium to see if any of these things work?"
14 I already know the answer to that. So I'm going to say no.
15 Let's not get into it. Okay?

16 MR. CONNOR: Okay. Your Honor --

17 THE COURT: But I do appreciate your brief.

18 MR. CONNOR: Okay. And I can hand it to Your Honor.

19 THE COURT: I sort of have a better sense of when I'm
20 going to want that brief.

21 MR. CONNOR: Okay. Okay. All right, Your Honor.

22 Q (By Mr. Connor) All right, Mr. Terry, we won't talk about
23 that.

24 Why don't we --

25 MR. CONNOR: Your Honor, one last detail. Again, I

1 don't want to complicate things.

2 I had attempted to ask Mr. Terry about information he had
3 about more current anthropometric data yesterday, and you had
4 ruled that you didn't want that in.

5 I hope I've made a sufficient offer of proof that
6 Mr. Terry would be able to testify that there's more recent
7 data that was likely more accurate in terms of the height of
8 wheelchair users.

9 THE COURT: More recent data?

10 MR. CONNOR: There's data available presently that
11 suggests that the anthropometric measurements used in the
12 *Ellerbe Becket* --

13 THE COURT: Oh, I remember that.

14 MR. CONNOR: So with regard to that.

15 THE COURT: Okay.

16 MR. CONNOR: Thank you.

17 Q (By Mr. Connor) Mr. Terry, does the ADA, when they're
18 implementing regulations or directives from the Department of
19 Justice, impose any requirements with respect to the design
20 of facilities in terms of the dispersal of accessible
21 seating?

22 A Yes.

23 Q Okay.

24 And can you tell us what is required under the ADA with
25 respect to that?

1 A Under the 1991 standards, at 4.33.3, it said that you had
2 to provide wheelchair users the comparable sight lines and
3 dispersal, choice of ticket prices. They didn't really talk
4 about exactly how to do that because there were so many
5 different types of large assembly areas, and small assembly
6 areas, that were covered by it, but choice of admission
7 prices and viewing angles was a mandate, comparable.

8 Q And was there any other clarification with respect to what
9 was meant by the idea of comparable sight lines?

10 A Yes.

11 Q Let me ask specifically.

12 Did the ADAAG manual address what was meant by
13 comparable sight lines?

14 A Yes, they did.

15 Q Okay. And what did it indicate?

16 A It indicated that comparable sight lines meant dispersal
17 at varying distances from the playing field, in this case, at
18 multiple levels at -- yeah, I'd have to look at exactly what
19 the language said to see which all the pieces were that the
20 manual picked up.

21 Q Okay.

22 A There was also other clarification in other documents that
23 were produced.

24 Q Okay.

25 So distance from performance areas was one of the

1 factors in assessing dispersal?

2 A Yes.

3 Q All right.

4 Mr. Terry, were you asked to assess whether the
5 accessible seating in T-Mobile Park is dispersed in such a
6 manner as to provide wheelchair patrons with comparable lines
7 of sight?

8 A I was.

9 Q Okay.

10 And what did you do to asses -- well, let me ask you
11 first off: What was your conclusion with respect to that?

12 A That the stadium has pretty good dispersal, horizontally,
13 around the field. There are positions where wheelchair users
14 can go at various viewing angles, from, you know, the
15 outfield, from the infield, from first base, third base,
16 behind the catcher. There are places you can go horizontally
17 at the various levels. There were a few places where I
18 couldn't tell. But the horizontal separation was good. So
19 the viewing angles horizontally were good.

20 Viewing angles vertically were dispersed to all levels,
21 although they were in back of all the levels, except for the
22 300 and the one seat that we could find available in the
23 Diamond Club area between the dugouts.

24 Q So did you find that the accessible seating was dispersed
25 so as to provide comparable viewing angles to accessible

1 patrons, vertically?

2 A The way the standard was written was that you had to
3 provide a choice of admission prices and viewing angles and
4 that's comparable to that provided for the general public.

5 There were -- there are choices of admission prices, but
6 it's not comparable. So the dispersal among the ticket
7 prices was one that was a problem.

8 Also, the distances, there are options, but they're not
9 comparable because the numbers are so small forward of the
10 41st row, between the foul poles.

11 Q Okay.

12 Mr. Terry, you brought up a second issue, and I believe
13 these are intertwined, which is the ticket pricing and the
14 physical dispersal. Let's talk just on the physical
15 dispersal aspect of this right now.

16 A Okay.

17 Q Okay.

18 And you said -- I think what Mr. Rogel testified to
19 yesterday, which was that there are effectively no accessible
20 seats below the 41st row, except with respect to the ones in
21 the Diamond Club, correct?

22 A Yes.

23 Q Okay. Let me change and ask you another question.

24 Does the ADA or its implementing regulations set forth
25 a presumed percentage of accessible seats that are supposed

1 to be provided in a facility -- in a public facility?

2 A Yes.

3 Q Okay. Could you tell me what that percentage is and where
4 it derives from?

5 A In a stadium over 5,000 seats, which this is, you look at
6 the seats that are supposed to be counted; you look at
7 Section 221, the scoping standard from the current ADA; you
8 look at 4.1.3(19) --

9 THE COURT: Wait a minute. These are current ADA
10 standards?

11 THE WITNESS: The -- well, the --

12 THE COURT: Passed when?

13 THE WITNESS: The 1991 standards were the 4.1.3(19).
14 That's where their list was. It said one percent. That was
15 easy to figure.

16 The 2010 standards said -- they gave you a chart that was
17 36 for the first 5,000 seats, plus one for each 200 or a
18 portion thereof over 5,000.

19 THE COURT: You're talking about the 2010 standards
20 now?

21 MR. CONNOR: Yes. Your Honor, and in this context,
22 I'm sure the defendants would want to agree to it with us,
23 because the requirements have actually gone down in the 2010
24 standards, and we acknowledge that those are the applicable
25 requirements with respect to numbers.

1 THE COURT: I was wondering why there wasn't an
2 objection.

3 THE WITNESS: He wants that number.

4 MR. CONNOR: If Mr. Willey would like to say they
5 have to have one percent, that would be fine.

6 MR. WILLEY: I'll discuss this on cross, Your Honor.

7 THE COURT: You'll what?

8 MR. WILLEY: I will discuss this on cross.

9 THE COURT: Okay.

10 All right. So we're talking about the percentage in the
11 2010 standards. Okay.

12 THE WITNESS: And that percentage in this stadium
13 amounts to about a half -- .00526 ratio, so it's a little
14 more than a half of a percent.

15 Q (By Mr. Connor) Okay.

16 And, previously, it had been one percent?

17 A Yes.

18 Q Okay.

19 So at the time the stadium was constructed, there was
20 supposed to be one percent accessible seats?

21 A That's correct. One percent wheelchairs, plus one percent
22 companions.

23 Q Okay. Thank you for clarifying.

24 THE COURT: One percent wheelchair and one percent
25 what?

1 THE WITNESS: Companions. So a wheelchair user
2 doesn't have to go to the game by themselves, there has to be
3 a space set aside for each wheelchair space -- a seat.

4 Q (By Mr. Connor) Thank you for mentioning that.

5 Mr. Terry, under the 2010 standard, the half percent
6 applies to the wheelchair users?

7 A Yes.

8 Q And is there also an additional half-percent requirement
9 for accessible seating?

10 A That's correct.

11 Q Okay.

12 So the total accessible seating, under the 2010
13 standard, is one percent?

14 A One percent if you include the companion, yes.

15 Q If you include the companion. Okay. All right.

16 Mr. Terry, did you make an effort to determine how many
17 seats there were in the main level?

18 MR. CONNOR: Derik, maybe we can pull up Exhibit 171,
19 I think it is. No, 191, the map.

20 A Yes, I did.

21 Q (By Mr. Connor) Okay.

22 And when I'm asking you that, I'm talking about the
23 seats from foul pole to foul pole. Did you assess that?

24 A Yes, we did.

25 Q All right.

1 And how many seats did you determine were in that area?

2 A A little over 20,000, maybe 21,000, something like that.

3 I don't recall the exact number.

4 Q Okay.

5 THE COURT: Wait a minute. Which seats are these?

6 THE WITNESS: It's the 100 Level, between the foul
7 poles.

8 THE COURT: Are you talking about all seats?

9 THE WITNESS: All seats between the back -- the
10 wheelchair users on the back and the front wall on the field,
11 around behind the dugouts and home plate, all the way out to
12 the foul poles. So it would be in here.

13 I can't remember if Section 151 was included in that
14 number, or if it stopped at 150. Same way, I think, 110 was
15 included in that. So it went all the way around this area
16 right here. And, again, I can't remember where it was there
17 and where we took that number right there. I'd have to look
18 at my notes.

19 Q (By Mr. Connor) Mr. Terry, there are colored shading on
20 this map. Do you see that?

21 A Yes.

22 Q And I will represent to you that Mr. Rogel testified
23 yesterday that that relates to different price points for
24 those seats.

25 A Yes.

1 Q Was that your understanding?

2 A That's my understanding as well.

3 Q And how did you come to have that understanding?

4 A Two different ways: One, we looked at the -- what we
5 could find on the Major League Baseball TicketMaster site for
6 the stadium. Then we looked at a chart like this one that
7 was available on the Internet, and then we looked at the
8 seating manifest that was provided by the defendants that
9 showed the price zone or price --

10 THE COURT: Okay. You've moved now from the
11 percentage to the different prices, right?

12 THE WITNESS: Yes.

13 THE COURT: I thought you were going to tell us
14 whether they met the percentage requirement. Did they? I
15 mean, you're moving --

16 MR. CONNOR: Your Honor, it's very confusing, and I
17 understand why you're asking what you're asking. Let me --
18 I'll step back and ask it just in terms of percentages.

19 Okay?

20 THE COURT: Well, you were talking about percentages.

21 MR. CONNOR: I know.

22 THE COURT: I thought we were going to get an opinion
23 from him about whether there was a percentage that met the
24 2010 standards. You're now talking about ticket prices.

25 MR. WILLEY: Your Honor, I want to be clear that Mr.

1 Terry has not opined an opinion with respect to the
2 percentage of ADA seating in the stadium. He has not
3 rendered that opinion, and he cannot do so today.

4 THE COURT: Oh, okay. Well, then, now I know why
5 he's not giving me an opinion.

6 MR. CONNOR: I disagree with Mr. Willey's
7 characterization.

8 In his report, Mr. Terry indicated that there's not
9 sufficient seating in terms of vertical dispersal because of
10 the numbers.

11 THE COURT: No, no. I'm just asking a very simple
12 question.

13 MR. CONNOR: Okay.

14 THE COURT: I know he doesn't like the vertical
15 seating arrangements. We've been there. They're all in the
16 back, except for the third level and the little ones in the
17 front.

18 I thought we were dealing with something that seemed to me
19 very simple. I was going to get a clear answer.

20 Under the 2010 standards, which everyone seems to be
21 thinking so far, one percent, including companion seating,
22 one percent?

23 MR. CONNOR: Correct.

24 THE COURT: Do they meet the one percent? Somebody
25 should be able to add up the numbers.

1 MR. CONNOR: I think Mr. Rogel told you they didn't.

2 In front of the pricing --

3 THE COURT: I'm not talking pricing. I'm talking
4 whether --

5 MR. CONNOR: Your Honor, because --

6 THE COURT: Never mind. I think I can do it myself.

7 MR. CONNOR: Okay.

8 THE COURT: All I have to do is count the number of
9 seats that are there with companion seats. And I'm sure
10 it's -- I don't want to say it's a simple mathematical
11 calculation, but we can figure out whether it's one percent
12 or not. I just thought maybe he had done it.

13 MR. WILLEY: Your Honor, maybe it would help if I
14 told you there was no claim in the case with respect to the
15 percentage of the ADA seating in the stadium.

16 The claim in the case has to do with distribution of that
17 seating or pricing of that seating. That's what the issue
18 is.

19 THE COURT: That's all you had to tell me, that we
20 don't have to deal with it.

21 MR. CONNOR: Your Honor, the distribution is related
22 to the percentage of seats that you're supposed to have,
23 right? And so we don't disagree at this point that there are
24 sufficient seats in total in this stadium to fulfill the one
25 percent. Right?

1 THE COURT: That's what I needed to hear.

2 MR. CONNOR: We don't disagree with that. And this
3 is what I was trying to develop with Mr. Terry.

4 You do not satisfy the law with respect to dispersal, as
5 far as the ADA is required, if you stick all of those seats
6 at the back of the stadium. All right?

7 THE COURT: I understand your position, counsel.

8 MR. CONNOR: Okay. All right. And --

9 THE COURT: I just needed to know that the percentage
10 was introduced. But that really isn't an issue. Okay?

11 MR. CONNOR: No, but I just want to make sure Your
12 Honor understands.

13 We think the percentage is relevant to assessing whether
14 there's been adequate distribution, precisely for the reason
15 I just described, which is you can meet the percentage --

16 THE COURT: I got that message.

17 MR. CONNOR: Okay. Great. Perfect.

18 Q (By Mr. Connor) Mr. Terry, I'm going to ask you something
19 that's simple, and I don't want to -- the judge probably
20 understands this.

21 Are the lines of sight at the rear of the first level of
22 the stadium comparable to lines of sight in the seating
23 sections in front of it? And by that, just, again -- that
24 was poorly word -- but do you understand that the accessible
25 seating on the 100 level is located, at least in part, at the

1 rear rows of the various sections that you've circled?

2 A Yes.

3 Q Okay?

4 A So the viewing angles from the back do not provide
5 comparable choices to the viewing angles at other portions of
6 the 100 viewing level.

7 Q In your opinion, do the viewing levels -- and I don't mean
8 to belabor a simple point, but do the viewing angles from the
9 rear of the 141 section, for example, are those comparable to
10 the viewing angles of somebody in the middle rows of the 141
11 section?

12 A No, they're not.

13 Q All right.

14 Let's -- let's go back.

15 The distribution requirement that we're just talking
16 about, you indicated there was supposed to be comparable
17 choice of sight lines, correct?

18 A Yes.

19 Q Okay.

20 And you also mentioned that the ADA required a
21 comparable choice of ticket prices, correct?

22 A Yes.

23 Q All right.

24 Do you have an understanding and did you evaluate
25 whether -- do you have an understanding of the pricing

1 practices of the Mariners with respect to these areas on this
2 map?

3 A Yes.

4 Q And what do you understand that to be?

5 A Generally speaking, the seats that are closer to the
6 field, the closer to the center are the higher priced, and as
7 you get away from that point, you get lower-priced tickets,
8 and those reflect demand, where people want to sit and what
9 they're willing to pay to sit there.

10 Q In your review of the manifest, did you have an
11 understanding as to whether there is a difference in prices
12 in the different shaded areas on this map?

13 A Did I have an understanding of that?

14 Q Yes.

15 A In what way?

16 Q Well, do you understand -- well, let me ask you this:
17 Let's pick 42. There's different shades of blue on that?

18 A Yes.

19 Q Do you understand whether those tickets are typically
20 priced the same or different than each other in the different
21 shades?

22 A The back is the lower price and the front is the higher
23 price, and there are zones in between that reflect zones of
24 price changes.

25 Q Okay.

1 Do -- and, again, this is sort of obvious, but do
2 wheelchair users have the option of purchasing tickets, for
3 example, in Section 142, in the middle pricing zones?

4 A No.

5 Q All right.

6 Under the ADA, should they be allowed to do so?

7 A Yes, at that price.

8 Q Okay.

9 Mr. Terry, they can't purchase tickets in those areas
10 because there's not accessible seating there presently,
11 correct?

12 A That's correct.

13 Q All right.

14 Does the ADA or the implementing regulations say what's
15 supposed to be done in those cases?

16 A Yes. The regulations say that if the seats -- that
17 wheelchair seats have to be provided in a choice of prices,
18 and it's a full choice of prices, because it has to be
19 comparable; that those seats have to be provided either in
20 that zone, in that ticket price area, or they need to be
21 provided in a better location at that price.

22 So if the design of the stadium or barriers in an existing
23 stadium, it's not readily achievable to remove those, then
24 the wheelchair positions have to be in as good a place or
25 better location than what the price would be.

1 Q Okay.

2 And what you're reciting now stems from which
3 regulation?

4 A It started with the 1991 standards, where it said choice
5 of ticket prices, admission prices, and lines of sight that
6 are comparable to those provided to members of the general
7 public.

8 As the years went on, the Department of Justice went
9 through and said in case you misunderstood that, here's how
10 you implement that. And so in the technical assistance
11 materials and the 2010 regulations that went into effect
12 2011, I believe, when those regulations came out, that said
13 that the readily achievable barrier removal had to be done
14 and then that seats had to be provided as described so the
15 people who used wheelchairs would have choices of admission
16 prices, as required in 1991, that was comparable for other
17 people.

18 Q Okay.

19 Mr. Terry, is there a difference with respect to how
20 facility owners are supposed to deal with modifications to
21 practices, policies, and procedures, as opposed to structural
22 changes?

23 A The policies, practices, and procedures are found in the
24 regulations, not the standards portion of the regulations but
25 in the basic regulations. They are -- they're, essentially,

1 what they were before. There were some modifications,
2 particularly a lot more clarity added in the 2010 regulations
3 for ticketing, but they're just interpreting what they had
4 said before.

5 Q Okay.

6 A And that went into effect -- policies, practice, and
7 procedures went into effect when the regulations became
8 effective after 2010.

9 Q Okay.

10 What I'm wondering is, is there any grandfathering in
11 in terms of what you're expected to do with respect to
12 policies, practices, and procedures?

13 A No. There's no safe harbor, there's no grandfathering.
14 That's just what's required to be done.

15 Q So if the DOJ said change your practice in the year 2019,
16 does the stadium have to do that, irrespective of when it was
17 constructed?

18 A Yes.

19 THE COURT: Can you repeat that question?

20 MR. CONNOR: Yeah.

21 Q (By Mr. Connor) With respect to policies, practices, and
22 procedures, as opposed to structural changes to a facility,
23 if the DOJ promulgates regulations this year that says
24 facilities are supposed to do this with respect to policies,
25 practices, and procedures, like pricing, for example, can a

1 stadium say, "We don't have to change our pricing because we
2 were built in 1993"?

3 A No. The policies, practices, and procedures go into
4 effect as of the effective date of that regulation, so that
5 has already passed.

6 MR. WILLEY: Your Honor, I would respectfully submit
7 that Mr. Terry is opining legal opinions at this juncture.

8 THE COURT: I can't hear you.

9 MR. WILLEY: He's opining legal opinions at this
10 juncture.

11 THE COURT: Well, he's already testified. It can
12 stand. He is getting into --

13 MR. CONNOR: It's a very close line. I appreciate
14 that, so I'll discontinue further questioning.

15 THE COURT: That will stand.

16 MR. CONNOR: Thank you, Your Honor.

17 Q (By Mr. Connor) Mr. Terry, I didn't ask you this, but --
18 and I apologize for backtracking a little bit -- but with
19 regard to vertical distribution in this stadium, did you
20 examine what seating there is in front of the back row of the
21 first level?

22 A Yes.

23 Q Okay.

24 And the judge heard testimony about this yesterday, so
25 I don't want to belabor it. But there have been seats added

1 in the front row of the stadium in what's been identified as
2 the Diamond Club and the Premier Club. Do you understand
3 that?

4 A I do understand that, yes.

5 Q Do you understand where that seating is located,
6 physically, in the facility?

7 A I do.

8 Q Okay.

9 And have you -- did you make any effort to determine
10 whether additional seating could be added -- well, let me ask
11 it this way so I don't have objections about remediation.

12 Is there existing egress to additional spaces behind
13 home plate, at which there is not presently accessible
14 seating?

15 I'll strike that question. I think that was not
16 typical verbiage.

17 Let me ask it this way: Have the Mariners added all
18 the seats that could be added for accessible seating, without
19 structural changes to the facility, at all points of egress?

20 MR. WILLEY: I'm going to object to this question;
21 lack of foundation, and because it was something he's not
22 previously opined on.

23 THE COURT: Overruled.

24 A That area was under construction when I was there in
25 February, and so there was concrete ripped out. I haven't

1 looked back to see if any of that concrete was structural,
2 but in looking at the construction that was going on at the
3 time, it did not appear to be. It appeared to be on grade,
4 so there wouldn't be structural changes that would prevent
5 from going any further, from what I could see while I was
6 there on site.

7 Q (By Mr. Connor) Okay. Meaning you could rip out the
8 fixed seating and make additional spaces in that area?

9 A Do the same thing that they did during February.

10 Q Okay.

11 MR. CONNOR: Your Honor, I don't mean to go further
12 than you want me to go, but I'm going to ask Mr. Terry a
13 question, and you can tell me if it's too far.

14 Q (By Mr. Connor) Mr. Terry, can vomitories be built to
15 provide additional means of egress in facilities?

16 A Yes.

17 Q Okay.

18 Are there existing vomitories in T-Mobile Park?

19 A Are there existing vomitories?

20 Q Yes.

21 A There are vomitories throughout the stadium.

22 Q Okay. Is there -- that's all I'll ask.

23 Mr. Terry, let's talk a little bit more about pricing.

24 Did you attempt to determine -- we've already talked,
25 to some extent, about the fact that, obviously, wheelchair

1 patrons don't currently have the option to purchase tickets
2 in the price zones where there's not accessible seating,
3 correct?

4 A Correct.

5 Q Did you make any effort to determine whether tickets were
6 available to wheelchair patrons for seats that had been
7 identified as being accessible seating?

8 A Yes.

9 Q Okay. And what did you do in that regard?

10 A I looked, at several different times over the last year or
11 so, on the Mariners' TicketMaster site to see what tickets
12 were available for wheelchair users; clicked on the little
13 bar which shows you which accessible seats were available,
14 and looked at where they were in the stadium; and at one
15 point, went and looked at every single game remaining in the
16 season and attempted to find out where they were available.

17 Q Okay. And what did you see when you did that?

18 A The wheelchair seating positions that were constructed in
19 February, behind home plate, I didn't find, at any point,
20 more than one of those wheelchair positions that was actually
21 available for sale. And the price of that one changed over
22 time. It was at a higher price earlier in the season, and
23 later in the season, it switched to, I believe, a \$75 price,
24 and the other seats were not available down there.

25 In other places in the stadium, it appeared that

1 wheelchair seats generally sold out in the sections closer to
2 behind home plate on the 41st row. And going around at a
3 similar kind of distribution, the seats in front of them were
4 going out -- the wheelchair seats sold out faster than the
5 sections in front of them sold out.

6 Q Okay. Well, let me ask you about that.

7 Did you look at what was available, in terms of
8 non-accessible or the seats that weren't accessible seats?

9 A Yes. When the TicketMaster zoomed-in drawing shows you
10 what's available for wheelchairs, it also shows what's
11 available for the general public.

12 Q Okay. And what did you see with respect to that?

13 A Just what I said: That the seats for the general public
14 did not sell out as fast as the wheelchair positions close to
15 them sold out, near the center of the field, near the -- in
16 the zones, you know, directly behind home plate -- those
17 sections behind home plate.

18 Q Okay.

19 And what is the practical implication of that for
20 somebody who is a wheelchair user in terms of their choice in
21 purchasing tickets?

22 A That the seats are not practically available to them as
23 they are for people who can walk down the steps and sit in a
24 standard seat.

25 Q Mr. Terry, I'm fumbling and looking for -- you prepared an

1 exhibit to your report?

2 A Yes.

3 Q Could you assist me and tell me what exhibit that was?

4 A Let's see. Which binder are we in? The white binder or
5 the --

6 Q The white binder.

7 A The white binder. Okay.

8 Q Let's look first at Exhibit 26, which we looked at,
9 briefly, before. Do you recognize that exhibit?

10 A I do.

11 THE COURT: Which exhibit are we --

12 MR. CONNOR: Twenty-six, Your Honor, Plaintiffs'
13 Exhibit 26.

14 Q (By Mr. Connor) I think we discussed this yesterday, and
15 so I don't want to spend a lot of time on it, but what is
16 this exhibit?

17 A The white seats are seats -- the white spaces within the
18 sections are the places that have been sold, and the blue
19 places are those that have not been.

20 In this exhibit, the dark red bars cover the wheelchair
21 positions so that you can't tell whether they've been sold or
22 not, and that was so this exhibit could explain where the
23 wheelchair seats are located in the field more graphically.

24 Q Okay. And can I also have you look at Exhibit 162?

25 A Yes.

1 Q Mr. Terry, can you explain what this exhibit represents?

2 A These are season-ticket prices and their availability as
3 of April the 28th.

4 Q And so looking at this, there's reference to different
5 plans. Do you see that?

6 A Yes.

7 Q Okay.

8 And what does that signify or what does that pertain
9 to?

10 A As of the date this was taken, there were five plans for
11 season tickets that were available to people in the various
12 sections where we'd done the sight-line studies. So these
13 sections that are listed on the left are not all of the
14 sections; they're sections where we did the sight-line
15 studies. And this shows the prices of the season tickets,
16 with the associated row numbers, and whether or not there
17 were season tickets available in those sections at that time,
18 on that date, for wheelchair users.

19 Q And where did this information come from?

20 A It came from the Mariners' website.

21 Q Okay.

22 And so, for example, let's look at the Section 124.
23 There's a reference to a Plan A, which, apparently, pertains
24 to people purchasing 20 tickets at a time?

25 A That's correct.

1 Q Okay.

2 And it appears there was a price for those of \$918 for
3 non-accessible seating, correct?

4 A That's right.

5 Q Okay.

6 Were those tickets -- was that plan available to
7 wheelchair-accessible patrons?

8 A Section 124 did not have any wheelchair spaces available
9 for season tickets, the 20-plan price, on that day.

10 Q Okay.

11 And I assume it's the same with respect to the other
12 information you've shown me here?

13 A Yes. Where it says "WC not available," but there is a
14 price on standard seating, it means standard seating had
15 season tickets available in that section, but wheelchair
16 users did not have season tickets available in that plan in
17 that section.

18 Q Okay.

19 There's some lines on this exhibit that are highlighted
20 pink in color that says "not offered." What do those
21 reflect?

22 A It's my understanding that that plan was not offered in
23 that section. So that -- for example, in the 308, it looks
24 like there were no season tickets available in Section 308
25 for anybody. They just weren't offered.

1 Q But with respect to others, there was an availability for
2 patrons not needing accessibility when there was not for --

3 A That's correct.

4 Q At least in the sections, correct?

5 A Yes.

6 Now, with the exception that in Section 247, where it
7 said the standard seats were not available, so it appears
8 that all of the standard seat season tickets for 20-game plan
9 in Section 227, that all of those were all gone. Both the
10 wheelchair-user spaces were gone and the standard seats were
11 gone.

12 Q Okay.

13 A So if it says "standard not available," it means that had
14 sold out. It appeared to have been offered, but it appeared
15 to have been sold out.

16 Q Okay.

17 And, Mr. Terry, I'm sorry, I didn't have you explain --
18 I don't want to go over it too much, but back on Exhibit 26.

19 On this map, you'd indicated that the red -- dark red
20 reflected seats that were available on that day?

21 A The dark red was an attempt to use this composite drawing
22 of the stadium and show where all potential wheelchair seats
23 were placed in the stadium. So the red shows where they
24 could be, where they were either available or they were sold.
25 So every wheelchair position that TicketMaster knew about for

1 wheelchair users was in dark red. So this is not showing
2 availability. This is showing what exists.

3 Q Oh, I'm sorry. I misunderstood. All right.

4 Does this reflect anything with regard to the
5 availability of wheelchair seating?

6 A Not for wheelchair seating.

7 Q Can I ask you -- okay.

8 There appears to be a seat available towards the home
9 plate, an available accessible seat. Are there more -- there
10 are more than that; is that correct?

11 A The drawings that we were given, post my site visit, when
12 they tore up the concrete, we could see the concrete and the
13 dirt where they were building, those areas down there, but we
14 didn't have any kind of drawings, anything.

15 After my site visit, I was given a drawing that showed
16 what was supposed to be constructed there, and then I saw
17 some photographs that had been provided by the defendant that
18 showed additional wheelchair seats behind home plate, in that
19 area, and it totaled eight wheelchair positions down in that
20 location.

21 Those eight seats, in all of the games that I looked at --
22 and I looked at dozens of games to try to find out how many
23 of those were actually available for wheelchair users to
24 purchase through TicketMaster, and I never saw a game where
25 more than one of those was actually available. So I don't

1 know if there are wheelchair seats there, or if they had been
2 in-filled by other seats or what had happened. They just
3 weren't available. They may have been sold to wheelchair
4 users, they may have been sold to other people, I don't know
5 what was going on. But I couldn't find one seat there. So
6 this drawing shows that one wheelchair position, because we
7 know it was available at some point --

8 Q Okay. All right.

9 A -- TicketMaster had evidence of it.

10 The red lines also represent -- they cover up the
11 companion seats as well. So it's not just the wheelchair
12 users. These are the zones where wheelchairs and their
13 companions can sit.

14 Q Okay.

15 And would the one seat that was available on the dozens
16 of days that you mentioned, would that allow a wheelchair
17 user to purchase a seat and have a companion available?

18 A It appeared to. I didn't go through the process because
19 I'm not eligible to buy one, but it appeared that they were
20 available for some games.

21 Q Let me clarify my question.

22 Was there both, to your understanding, an accessible
23 seat and a companion seat available on those days, or just
24 one seat?

25 A I believe it was both.

1 MR. CONNOR: Mr. Terry, I think that's all I have for
2 you. Let me check with my co-counsel to see if there's
3 anything he wants me to follow up on.

4 THE WITNESS: Okay.

5 MR. CONNOR: Your Honor, that's all I have. Sorry.
6 Let me check with my other co-counsel.

7 Q (By Mr. Connor) Mr. Terry, could you look at Exhibit 2?

8 MR. WILLEY: Your Honor, we object to Exhibit 2.
9 It's Mr. Terry's report. He is welcome to testify on the
10 stand, but his report is hearsay, and it's a classic example
11 and excluded generally.

12 THE COURT: I haven't seen it, so I can't tell.

13 Q (By Mr. Connor) Mr. Terry, can you tell the court what
14 Exhibit 2 is?

15 THE COURT: It's not up yet.

16 A It's my expert report from the --

17 MR. WILLEY: It's his expert report, Your Honor.
18 Courts consistently exclude expert reports. They allow the
19 expert to testify.

20 THE COURT: Do you have a question you want to ask
21 him?

22 MR. CONNOR: No, Your Honor. Some courts allow the
23 reports to be admitted.

24 All right. No further questions, Mr. Terry. Thank you.

25 THE COURT: Whenever you're ready, counsel.

1 CROSS-EXAMINATION

2 BY MR. WILLEY:

3 Q Good morning, Mr. Terry.

4 A Good morning. You've visited T-Mobile stadium once; is
5 that correct?

6 A That's correct.

7 Q That was February 5th, 2019?

8 A That's correct.

9 Q You've never been to a baseball game there?

10 A I have not.

11 Q Okay.

12 THE COURT: You've never been what?

13 MR. WILLEY: To a baseball game at T-Mobile.

14 THE COURT: Oh.

15 A They weren't playing in February.

16 Q (By Mr. Willey) Understood. And you haven't otherwise
17 been there; not this season, not last season, not ever?

18 A That's correct, not personally.

19 Q You had talked to the court about views of a scoreboard
20 when Mr. Connor was asking you questions?

21 A Yes.

22 Q Can you tell us, with some clarity, as to what regulation
23 you were referencing when you assert that there is a
24 view-to-scoreboard requirement?

25 A The requirement in 4.33.3 of the 1991 ADA standards

1 requires comparable viewing angles, and the regulations under
2 Title III for effective communication say that you have to
3 communicate effectively with people with disabilities. You
4 provide auxiliary aids and services, if necessary, but you
5 must communicate effectively with people with disabilities as
6 well. So there's a reg obligation and there's the comparable
7 viewing angles.

8 Q I just wanted to be clear.

9 You're telling the court that it's 4.33.3 of the '91
10 standard, right?

11 A Yes.

12 Q And you're also telling the court that it's effective
13 communication regs under Title III?

14 A Yes. That's -- as an architect, that's what I would be
15 designing for if I was looking at that.

16 Q Fair enough.

17 And the effective communication regs under Title III
18 are intended to address people with hearing and sight
19 impairments; is that correct?

20 A I don't believe it says that anywhere in the regulations.
21 That's an assumption that most people make.

22 Q You don't believe it says that anywhere in the regs?

23 A I don't believe so.

24 Q Are examples given in the regs?

25 A There are examples given.

1 Q And all those examples involve people with hearing or
2 sight impairments, correct?

3 A That's correct.

4 Q Okay. Thank you.

5 4.33.3 of the '91 standards refers to comparable line
6 of sight, I believe; is that correct?

7 A Comparable viewing angles.

8 Q Okay.

9 MR. WILLEY: Rondi, do you want to pull up 4.33.3?

10 THE COURT: I didn't hear your last question. Was
11 there a question?

12 MR. WILLEY: Yes. I asked Rondi if she would pull up
13 Section 4.33.3.

14 THE COURT: Try to talk slower, counsel. I think it
15 would be helpful to me and to the court reporter.

16 MR. WILLEY: I understand, and I appreciate your
17 guidance, Your Honor.

18 Q (By Mr. Willey) Mr. Terry, on the screen in front of you
19 is Section 4.33.3. This is the language you were referring
20 to, right, lines of sight comparable?

21 A The highlighted area is, yes.

22 Q Okay.

23 And that language was then clarified further by the --
24 ultimately, the *Accessible Stadiums* document, correct?

25 A It was.

1 MR. WILLEY: Can we pull up DX-2, please? And if we
2 could go to the second page there.

3 Q (By Mr. Willey) If we're looking at the second bullet
4 point on this page here, Mr. Terry, this refers to where the
5 DOJ defines what comparable line of sight means, right?

6 A No.

7 Q Well, it says -- let's just read the language. I don't
8 want to debate it with you. It says, "A comparable line of
9 sight, as illustrated in the figure below, allows a person
10 using a wheelchair to see the playing surface between the
11 heads and over the shoulders of the persons standing in the
12 row immediately in front of them and over the heads of the
13 persons standing two rows in front." Is that correct?

14 A That's what it says.

15 Q Right.

16 And the reference here, "comparable line of sight," is
17 to the playing surface, right?

18 A That is what this reference refers to.

19 Q Okay.

20 Is this a regulatory reference that requires a
21 particular line of sight to a particular scoreboard?

22 A A regulatory reference? It is a much broader requirement
23 than a scoreboard.

24 Q I understand. I'm asking you what the reference is so we
25 can look at it and talk to the court about it.

1 A I don't know of a regulatory reference from the Department
2 of Justice that specifies scoreboards.

3 Q Okay. So if you were to say that the -- as I believe
4 you've testified that the Mariners are not complying with
5 some ADA issue or regulation, what is it?

6 A Sorry?

7 Q With respect to scoreboards.

8 A I'm sorry?

9 Q Are you opining that the Mariners do not comply with the
10 ADA with respect to the line of sight to the scoreboard?

11 A I am.

12 Q Okay.

13 What is the regulatory basis upon which that opinion
14 rests?

15 A Viewing angles that are comparable to those provided to
16 members of the general public.

17 Q Which is to say Section 4.33.3 of the '91 standards and
18 *Accessible Stadiums*?

19 A *Accessible Stadiums* addresses the particular issue of
20 lines of sight over standing spectators. This does not
21 address other viewing angles that are required for players --
22 for spectators to be able to see what's happening in the
23 game.

24 Q I understand there is no regulatory reference on this
25 subject, is what you're saying?

1 A I'm sorry?

2 Q There is no regulatory reference on this subject.

3 A I'm not saying that.

4 Q Is there?

5 A Are you saying that specifically mentions scoreboards? If
6 that is your question, then I do not know of a place where
7 the regulatory references specifically mention scoreboards.

8 Q Okay.

9 Is there more than one scoreboard at T-Mobile Park?

10 A That's a definitional question. There are lots of places
11 where information is provided. There's different information
12 provided in different places. So, for instance, the banners
13 that attach to the front of the various levels have got
14 certain types of information. There's other types of
15 information that's available on this large scoreboard that's
16 shown in the photographs we've looked at.

17 MR. WILLEY: Rondi, if you could pull up

18 Defendants' 5, please.

19 Q (By Mr. Willey) Mr. Terry, this is a map of the stadium
20 listing the sections and listing the accessible seating
21 locations. You've seen this before, yes?

22 A It's the layout of the facility.

23 Where are the scoreboard locations you're talking
24 about?

25 Q So I'm going to ask you. Where is the scoreboard that

1 you've been talking about located on this map? If you could
2 show the court.

3 A I don't recall where everything is located on this map.
4 There are some things in the back, near the outfield; don't
5 remember exactly where they are. I can pull up my
6 photographs and do that, which would be really easy for me to
7 do.

8 Q I'm just wondering if you know where the other scoreboards
9 are.

10 A You know, I don't have a photographic memory of this. And
11 if it's a memory test, I'm not going to be able to tell you
12 where every scoreboard is in the stadium. I can look at my
13 photographs and tell you, but I don't have that kind of
14 memory.

15 Q Okay. Let's do this.

16 MR. WILLEY: Could you clear that for me, please?

17 Q (By Mr. Willey) So the scoreboard you're talking about is
18 here, right?

19 THE COURT: The big scoreboard, you're talking about?

20 MR. WILLEY: Yeah.

21 THE COURT: The main scoreboard?

22 MR. WILLEY: This is the center field scoreboard,
23 Your Honor.

24 Q (By Mr. Willey) Is that where it's located, Mr. Terry?

25 THE COURT: You know where that is, don't you?

1 A If you're asking me to testify under oath, I'd like to be
2 able to verify that this is the one that we're talking about.

3 Q (By Mr. Willey) I'm not trying --

4 A Yes, I believe so. I believe so.

5 Q Okay.

6 Do you know if there is another scoreboard above The
7 'Pen area?

8 THE COURT: He's already indicated to you that he
9 doesn't know where the other scoreboards are. Are you sure
10 you want to take the time to go through every one of them
11 with this witness? I assume you're going to have your own
12 witness.

13 MR. WILLEY: I'm just wondering if he knows where
14 these other places are, and if he doesn't, that's okay.

15 THE COURT: He's told you he doesn't. He'd have to
16 look at his pictures and figure it out.

17 Q (By Mr. Willey) Are you aware of how many scoreboards
18 there are?

19 A Define "scoreboards" so I know what you're talking about?

20 Q Sure.

21 I'm defining scoreboards to mean visual displays that
22 are transmitting information about the game.

23 A Okay. Would that include, for example, a picture of the
24 player and their statistics when they come to bat?

25 Q I think it would.

1 A Would it only include that?

2 Q No. I said information about the game, so balls and
3 strikes, who's pitching, what the pitcher's pitch speed is,
4 what the game score is, all of that information communicated
5 about the game.

6 A There are lots of places that, in looking -- and, again,
7 it was dark on the day that I went there. But looking at the
8 photographs that Brenda Cummings took, and looking at things
9 online and looking at what I saw was in the field, there is
10 information displayed in many, many places around the
11 stadium. It is not all the same information so that people
12 with disabilities don't get to see all of the information;
13 they get to see part of it looking at those other
14 scoreboards.

15 Q Do you know what information is transmitted onto the
16 various scoreboards?

17 A I do not know what is transmitted on to those, because the
18 photographs that I've looked at show those photographs in an
19 instant, and most of those boards have varying information
20 that shows up on them.

21 When I speak of "scoreboard," I'm talk about the big
22 jumbotron-looking, colored scoreboard that is in the area
23 that you've shown here. I'm not complaining about other
24 scoreboards that are out there. I'm not saying anything
25 about those.

1 Q Fair enough.

2 And you don't actually know what's being transmitted on
3 those scoreboards around the stadium, do you?

4 A Not throughout a game. I don't know what information
5 might be presented on each of those boards. Some of them are
6 too small to show the kind of information that can only show
7 up on that big board.

8 Q You're also aware that, for the accessible seats on the
9 100 level and 200 level, there are video monitors above the
10 seats?

11 A Yes.

12 Q Are you aware of what the video monitors transmit during
13 the game?

14 A From the photographs that I saw, it appeared to be the
15 action of the game. They did not appear to be duplicating
16 information that was on that scoreboard.

17 Also, there were not many of those. They were fairly
18 small. They were dispersed. And so the ability to see -- if
19 you tried to display the information on the giant scoreboard,
20 on those it would be very difficult to see that because they
21 were so small and so far away for many wheelchair users.

22 Q Just so we're clear for the court, you've not actually sat
23 and seen what any of those video monitors show. You don't
24 know what the feed is?

25 A Not personally. I've seen the photographs that Brenda

1 Cummings, my associate, took of those.

2 Q Do you know if, for example, the hydro race shown on the
3 big scoreboard also appears on the video monitors?

4 A I don't know what goes across all those monitors all the
5 time.

6 Q Okay. Thank you.

7 Do you know if other seating sections in the stadium
8 have obstructed-access view to the center field scoreboard?

9 A Yes.

10 Q Lots of seats do, right?

11 A There are other seats that have some obstruction. So, for
12 example, if you're sitting in the -- say, for example,
13 Section 214, the overhang of the bottom of the 300 level
14 blocks a portion of that corner, and that shows up in my
15 photograph, that there's a slight portion of that blocked.

16 Q And the people who sit in this section -- right? --
17 they're not going to see that scoreboard?

18 A I don't know. Can they not turn around and look up at it?

19 Q I guess they could turn and look straight up, yeah.

20 What about the people sitting here?

21 A I don't know what their viewpoint of that is. Those are
22 very cheap tickets. They're not always available for sale.
23 Sometimes those sections are closed for games. Certain
24 games, there were no seats available on TicketMaster.

25 Q Those people there have an inability to see that

1 scoreboard, right?

2 A I don't know that.

3 Q You don't know that? You can't render any opinion on
4 that?

5 A That's correct.

6 Q Okay. Thank you.

7 And so when you were looking at the views of the
8 scoreboard, you were not, at the same time, ever assessing
9 views to other scoreboards or information communication
10 devices around the stadium, were you?

11 A I was not asked to look at those other ones.

12 Q Fair enough. You just didn't do it?

13 A No, I didn't do it.

14 MR. WILLEY: Okay. Rondi, if we could look at
15 Plaintiffs' 16, please.

16 THE COURT: Which number is this?

17 MR. WILLEY: I'm looking for Plaintiffs' 16, please.

18 Q (By Mr. Willey) This is one of the picture comparisons
19 you did; is that correct, Mr. Terry?

20 A Yes.

21 Q And this is showing a comparison between a wheelchair user
22 in Section 129, Row 41, Seat 16, I believe --

23 A Yes.

24 Q -- compared to a comparable spectator view in Section 129,
25 Row 40, Seat 18; is that right?

1 A That's correct.

2 Q And you're positing here that the percentage of the
3 scoreboard visible to the wheelchair user is 93 percent and
4 to the comparable spectator view is 100 percent?

5 A Yes.

6 Q Okay. Is that comparable?

7 THE COURT: Is that what?

8 MR. WILLEY: Comparable.

9 A I wouldn't argue about that one as being noncomparable.

10 Q (By Mr. Willey) So you'd say that's comparable?

11 A I would.

12 Q Okay.

13 So Exhibit 16 shows a comparable line of sight for the
14 scoreboard here?

15 A Yes. The obstruction is just a tiny speaker overhead, and
16 it blocks a very small portion of the scoreboard. And it
17 looked as if you could move your head from side to side and
18 you might be able to see around that speaker.

19 Q What I was establishing was that in this picture here,
20 which is Exhibit 16, your opinion is that's comparable?

21 A I'm not saying it's not. I'm fine with it.

22 Q Okay.

23 MR. WILLEY: Could we look at Exhibit 21? If you
24 could enlarge that slightly, Rondi, please?

25 Q (By Mr. Willey) You had talked with -- about this exhibit

1 with Mr. Connor this morning?

2 A Yes.

3 Q When we're looking at the comparable spectator view here,
4 you are describing that location as Seat -- it looks like
5 "approximate 16." What does that mean?

6 A I don't -- I don't remember exactly where I took that one
7 because I didn't have a photograph that showed where that was
8 placed. I didn't photograph the seat number before I took
9 that photograph, or immediately after it, but it is about in
10 Seat No. 16.

11 Q So we're not certain where that photograph is taken,
12 right?

13 A I'm no more certain than it's about Seat No. 16. It could
14 be Seat 14, it could be Seat 18, it could be 17 or something.

15 Q You didn't document where it was?

16 A I did not document exactly where it was. I know it was in
17 Row 10, and I know it was front of the wheelchair user.

18 Q So in this one, you're saying the center field scoreboard
19 is 78 percent visible to the wheelchair user and 87 percent
20 visible to the comparable spectator sitting in about Seat 16.
21 Is that comparable?

22 A It's a little more of a problem. It's comparable in the
23 corner. The majority of that, down in the corner where it's
24 blocked by the 300-level section, that's comparable, so that
25 would certainly not be an issue.

1 The upper right-hand corner might be. I just tried to
2 document all the places where we had done this, and I tried
3 to document exactly what we saw.

4 Q Well, I'm just asking you if it's comparable or not.

5 A I wouldn't argue about that one. I don't think we'd be
6 here if it was just for that one.

7 Q Well, what I'm trying to understand is, sir, where is the
8 point that you are drawing the line as to what's comparable
9 versus not, for purposes of this particular exercise.

10 A I think at the point where it feels like it's relegated to
11 something that's substandard for the people who are using it.

12 Now, as an architect, I'm responsible for understanding
13 the way my users react to the spaces that they're in. And so
14 my opinion is looking at it as to how is that perceived by
15 the users. Is that something that really creates a problem
16 for them? And I try to make a judgment call based on that.

17 If you're asking for a bright line, I don't know of a way
18 to draw a bright line, other than when viewed in its entirety
19 or when looking at this from the view of does it feel like
20 discrimination or not, like I said, I wouldn't be arguing
21 about this one if this was the only case.

22 Q No, I appreciate it, and I appreciate the role that you
23 take in terms of trying to accomplish what you're doing in
24 architecture.

25 What I'm trying to understand, though, is, as an expert

1 giving an opinion to this court, are you telling the court
2 that what we do is we kind of see what it feels like?

3 THE COURT: See what?

4 MR. WILLEY: What it feels like.

5 A Isn't that the way discrimination works? It's -- it's do
6 you have opportunities that are comparable; that you have the
7 overall feeling of it that is, is this something -- some
8 things are bright lines. Some things are bright lines. In
9 terms of this one, are you communicating effectively, is the
10 information that is up in that corner of the scoreboard
11 available at all times available on another band somewhere?
12 You'd have to look at a lot of different things to worry
13 about it.

14 But just looking at this picture, as I said, this is not
15 something that would cause me to say, oh, no, this is a
16 horrible design.

17 Q (By Mr. Willey) I understand. And I guess why I'm asking
18 the question is, if you're seeking to prosecute a claim
19 against my client, I'm trying to understand how it is we
20 should have known to do something at the time, in designing a
21 stadium in 1996, to avoid having somebody tell us, in 2019,
22 that something feels not quite right.

23 And I understand and appreciate individual persons'
24 feelings. I'm just trying to understand the standards we're
25 applying.

1 A Well, this scoreboard, if I understand it right, was not
2 actually installed on opening day. Was this added later?

3 Q I believe it was.

4 A Okay.

5 Q I believe there was a prior board there.

6 A Yeah. So what I would have expected the designers or the
7 purchaser of this thing to do is to say is this information
8 going to be available to anybody in the place that we want to
9 put it? It is it going to be available to everybody, or will
10 there be a discriminatory effect, whether intentional or not
11 intentional? And if there would be discriminatory effect
12 that would prevent people with disabilities from having the
13 same kind of statistical information that baseball spectators
14 love to see, then I'd provide that same information in some
15 other way that they could have access to that, rather than
16 just being -- not knowing that the information was being
17 given to everybody else or knowing that it was being given,
18 but they couldn't see what it was.

19 Q Fair enough.

20 And in order to do that, in a coherent way, what one
21 would need to do would be to look at the viewing from many
22 different seats and, at the same time, to recognize and
23 assess what's being shown on other means of communication and
24 other scoreboards in order to determine if there is that
25 information provided, right? That's what you need to do?

1 A That is the obligation.

2 Q And you didn't do that?

3 A I'm sorry?

4 Q You didn't do that here?

5 THE COURT: Counsel, you made your point.

6 MR. WILLEY: Okay. Thank you.

7 Q (By Mr. Willey) Mr. Terry, you had talked with Mr. Connor
8 about pricing of seats and also distribution of seats,
9 correct?

10 A Yes.

11 Q When we're talking about those things, those are not the
12 same thing, right?

13 A They're intertwined. The prices typically reflect the
14 kinds of choices of admission prices of 4.33 that are
15 comparable. Those fall into what are the dispersal and the
16 sight lines -- the dispersal and parts of the sight lines.

17 Q Again, so we're very clear, so the applicable regulatory
18 authority for seating distribution and whatever pricing
19 you're talking about, that would be for purposes of this
20 stadium, as constructed when it was, Section 4.33.3, the TAM,
21 the TAM supplement, and *Accessible Stadiums*, correct?

22 A I'm not following you. Why are we limiting it to that,
23 and why are we limiting it to the time that it was
24 constructed?

25 Q Well, because the time it's constructed is when there

1 would have been information and regulations available to the
2 architects that they could have applied. It would be a
3 challenge for them to anticipate what might occur in the
4 future.

5 So let's just talk about what was available at the
6 time. And if I'm missing something, please tell us.

7 A Okay.

8 Q So we have Section 4.33.3 of the '91 standards, we have
9 the TAM, we have the TAM supplement, and we have the
10 *Accessible Stadiums* document. Is there something else that
11 you're relying upon with respect to what the obligation was
12 at the time? Please tell me.

13 A I think those are sufficient.

14 Q Okay.

15 When I deposed you, you had -- we had talked a little
16 bit about your opinion with respect to accessible seating
17 distribution. Do you remember, vaguely, we talked about that
18 subject?

19 A We did.

20 Q Okay.

21 And what you told me at the time was that your
22 opinions, for purposes of this case, were premised on a,
23 quote, a hybrid kind of analysis, end quote, that mixed the
24 '91 and the 2010 standards; is that right?

25 A That's correct.

1 Q So when you're rendering an opinion about what the seating
2 distribution should be at T-Mobile Park, you're seeking to
3 impose the 2010 standards retrospectively?

4 A What I'm doing is exactly what you wanted to do with the
5 count.

6 The '91 standards required one percent of all seating in
7 the stadium to be wheelchair users, plus one percent for
8 companions; however, the 2010 standards gave you an
9 opportunity to reduce that number, which you have done, and,
10 therefore, there is a hybrid analysis there. Where the 2010
11 standards are less restrictive, you're allowed to use the
12 2010 standards. Where the '91 standards had a particular
13 requirement that was not met, then the obligation is to
14 correct it in accordance with the 2010 standard.

15 So in looking at it, if an element that met -- if an
16 element met the '91 standards, then it does not have to be
17 modified. If it did not meet the '91 standards, then I'm
18 going to look at it and say, all right, now the 2010
19 standards apply, and how would the 2010 standards have
20 applied to this.

21 So there is this mixture -- because of the safe harbor,
22 because of the reduction in access, there is a mixture in how
23 you look at particular questions related to the design of the
24 stadium.

25 Q Well, let me take this in just little pieces. Okay?

1 You're not opining about remediation, are you?

2 THE COURT: You're not what?

3 Q (By Mr. Willey) You're not opining about remediation, are
4 you?

5 A I'm only opining about whether the condition that was
6 there met the '91 standards, and if it did not, what
7 standards applied to it. So does this element -- what is the
8 applicable rule that applies to this element?

9 So I'm not talking about how you fix it. I'm talking
10 about what standard applies to that.

11 Q Right. And let's just take one step at a time.

12 If you were going to determine what the obligation of
13 T-Mobile Park was when the stadium was built, you would look
14 at the '91 standards, right?

15 A Plus the other documents we've talked about.

16 Q Plus the other documents, right?

17 And if you determined, hypothetically, that it did not
18 comply with those -- right? -- then you would assert the 2010
19 standards should apply, right?

20 A Yes.

21 Q Okay. If --

22 A Element by element.

23 Q But making the first determination, you must apply the '91
24 standards only, right?

25 A That's correct.

1 Q And you didn't do that; you actually did that assessment
2 with a hybrid analysis?

3 A No. I called it a hybrid analysis in my deposition
4 because I was trying to explain the fact that it's not an
5 either/or. If it failed '91, did it pass 2010? So it failed
6 the number of seats required under '91, but it passed the
7 number of seats required in the stadium under 2010. So I
8 gave you the benefit of the doubt because that's what
9 applied. In the same way if it passed '91 -- if an element
10 passed '91, then it didn't have to -- if an element passed
11 '91, it didn't have to comply with 2010, so I ignored it.

12 Q I think the number of seats is not at issue here.

13 A It's the concept.

14 Q It's not a claim in the case, and I don't want to confuse
15 the issue.

16 A I'm just trying to explain that that's the way it works,
17 and using an example that we already understand.

18 Q You would agree with me that one cannot determine
19 liability based on the 2010 standard?

20 A I'm sorry?

21 Q Would you agree with me that one cannot determine
22 liability based upon the 2010 standard in this case?

23 A No. It's more complicated than that.

24 MR. CONNOR: I think that's an ambiguous question. I
25 don't know what Mr. Willey means by "determine liability in

1 this case."

2 MR. WILLEY: It doesn't strike me as an evidentiary
3 objection.

4 THE COURT: Wait. Stop.

5 The witness has already said that he judged the adequacy
6 of whichever we're talking about now, distribution pricing,
7 whatever, by 1991 standards. Am I right?

8 THE WITNESS: That's correct.

9 THE COURT: And that would be the end of it if it
10 complied with the 1991 standard?

11 THE WITNESS: That's correct. That's correct.

12 THE COURT: If, in your opinion, it did not comply
13 with the 1991 standards, you would then look, I guess, for
14 purposes of saying what should be done to the 2010 standards?

15 THE WITNESS: I would be looking to see not what
16 should be done but what is -- what is it required to be now.

17 So, for example, let's say it didn't pass in '91, but they
18 came in and remediated it to meet 2010 in January, I show up
19 in February, this meets 2010, I don't care whether it met '91
20 or not. Right now it's compliant.

21 So I used '91 as the first threshold. If it failed that,
22 then I looked at 2010. If it failed that, it's noncompliant.
23 If it met either one, that element would be compliant.

24 Q (By Mr. Willey) And you're basing this upon those four
25 documents that we've referenced?

1 A Well, obviously, when I moved to the 2010 standards, I had
2 to look at the 2010 standards that applied when it failed
3 those.

4 Q With respect to your adjudication about 1991 compliance,
5 you're looking at the Section 4.33.3, the TAM, the TAM
6 supplement, and *Accessible Stadiums*, right?

7 A That's correct.

8 Q That's the sole substance of it?

9 A I'm sorry?

10 Q That's all you're --

11 THE COURT: Yes, counsel, he's answered that three
12 times.

13 MR. WILLEY: He's, actually, opined on other things
14 with Mr. Connor, and I want to make sure we're clear on that.

15 THE COURT: I think he had said to you that in
16 judging -- whether there is compliance with the 1991
17 standards, he's looked at those three things: The TAM, the
18 TAM supplement, and the cite that you talked about, 4.33.3.

19 Q (By Mr. Willey) You agreed, right -- I think I heard you
20 say this -- the horizontal distribution in T-Mobile Park is
21 good? It's compliant?

22 A Horizontal distribution I wouldn't argue about, yeah.

23 Q And I think you also testified previously that the 200 and
24 300 levels at T-Mobile Park meet the standards of vertical
25 dispersal?

1 A What I testified about was that the 200 levels, even
2 though it's in the back and it would not have met the 2010
3 standards for location, that the -- or would likely not have,
4 I didn't look at it that way -- but it didn't bother me.
5 Because the section was so short, I wouldn't have argued that
6 the 200 level would be a problem for that.

7 Q Right. So the 200 level you don't think is noncompliant,
8 right?

9 A I'm not claiming that it is.

10 Q Okay.

11 And the same thing with 300 level, you have no problem
12 with it?

13 A For vertical dispersal, that's correct.

14 Q And for horizontal? I think you testified --

15 A Yes, that's correct.

16 Q Okay.

17 Is there anything in the DOJ regs or guidance, in
18 effect in 1991 and 1996 when the stadium was built, that
19 refer to an assessment of vertical distribution section by
20 section or level by level?

21 A I don't believe that was there because it was a standard
22 that was written for lots of different types of facilities,
23 and they were expecting the designers and the owners to
24 achieve something that provided comparable lines of sight,
25 viewing angles, and choice of admission prices.

1 Q I understand.

2 A So they weren't so specific to get into those.

3 Q And so one doesn't know whether you should be looking at
4 vertical distribution throughout the stadium as a whole, or
5 looking at it section by section, right?

6 A I'm sorry?

7 Q There's no guidance from the DOJ as to whether or not
8 vertical distribution should be assessed by the stadium as a
9 whole, in an integrated sense, or whether you would piecemeal
10 it section by section or level by level. That's not in the
11 regs anywhere, is it?

12 A I think in designing a stadium like this, when you look at
13 the standard and it says "choice of admission prices and
14 viewing angles that are comparable as has been provided to
15 members of the general public," as a designer of the stadium,
16 you know that those things, when combined, that the choice of
17 ticket prices on the upper levels, in the back of the upper
18 level, may be different than down closer. So when you look
19 at that language together, that kind of performance language,
20 that you say, all right, how do we need to give people
21 comparable opportunities, a comparable experience, comparable
22 opportunities, choices in the stadium, and you make those
23 judgment calls based on what you know about what you're
24 designing.

25 Q Okay.

1 And to answer my question, there is no information in
2 the DOJ regs about assessing vertical distribution via the
3 stadium as a whole versus section by section or level by
4 level, is there?

5 A I don't recall that being in the DOJ regulations that came
6 out in '91. I know that it came out in other places. I
7 can't recall specific documents that mention that, from the
8 list that you gave.

9 Q And you can't identify for us any other DOJ document that
10 was contemporaneous that mentioned that?

11 A Not that you'll let me talk about.

12 Q Which is to say there's nothing published?

13 A No, I didn't say that.

14 Q Did you testify in the --

15 THE COURT: Wait, wait. Stop.

16 A I didn't say that.

17 Q (By Mr. Willey) Did you testify in the *Independent Living*
18 case about the Rose Garden in Portland?

19 A I did.

20 Q And the judge found that comparable sight lines meant
21 something different, didn't he?

22 A The judge in that case said that the sight line over
23 standing spectators, he did not see that in the Department of
24 Justice rules, and so he did not require them to add those.
25 They did add raised platforms in that stadium almost

1 immediately after the case. They enhanced the sight lines
2 for wheelchair users, but the judge did not enforce that in
3 his opinion.

4 Q And he understood -- I think his order, after you
5 testified, was that the lines of sight had to do with
6 different perspectives around the field, right? First base,
7 home, center field?

8 A You know, I don't recall exactly how he defined what was
9 what in there.

10 Q With respect to the pricing -- let's talk about ticket
11 availability first.

12 You had looked at ticket availability; is that right?

13 A Yes.

14 Q And I believe that your opinion about ticket availability
15 for single-game tickets, as opposed to season tickets or
16 packages, was based upon your review of TicketMaster on
17 April 16, 2019, for a single game on May 28th, 2019; is that
18 correct?

19 A That was one of the -- one of the bases for it.

20 Q You did not have an expert opinion about single-game
21 ticket availability for any game, other than May 28th, 2019,
22 right?

23 A No, that's not true.

24 Q Could you identify the games for which you had an opinion
25 about ticket availability, other than the one?

1 THE COURT: While you look for that, I think it's
2 probably a good time to take our morning recess, so we will
3 be in recess for 15 minutes. You can resume when we come
4 back.

5 MR. WILLEY: Thank you.

6 THE WITNESS: Can I continue to look?

7 THE COURT: You may.

8 (Court in recess.)

9 THE COURT: Were you able to find what you were
10 looking for?

11 | THE WITNESS: I was.

12 | THE COURT: Then, counsel, let's go.

13 Q (By Mr. Willey) Mr. Terry, did the Mariners meet the 1991
14 standard for the percentage of accessible seats when the
15 stadium opened in 1999?

16 A I don't know.

17 Q Did the Mariners' pricing for ADA-accessible seats and the
18 distribution of such pricing meet the ADA standard in 1991
19 when the stadium opened in 1999?

A I don't have any information about that.

21 Q Mr. Terry, there are a number of accessible seats in the
22 outfield bleacher area, in Sections 190, 191, 192, et cetera.
23 You can look at the DX-5. Here.

24 A Excuse me. Those -- there are wheelchair symbols on this
25 drawing, but they were not on drawings we had received

1 before. There was no indication of seats in that location.

2 Q So you don't have an opinion as to whether or not those
3 seats have comparable view lines?

4 A I didn't know there were seats. This is the only drawing,
5 that I can remember seeing, that shows that there were
6 wheelchair seats there.

7 Q I'm not trying to ask you to go somewhere that you don't
8 know about. If you don't know or have an opinion, that's
9 fine.

10 THE COURT: He told you he didn't know there were
11 seats there, so he can't give an opinion on --

12 Q (By Mr. Willey) How about here?

13 THE COURT: Ask him another question.

14 MR. WILLEY: Yeah. I showed him another section, the
15 section that extends forward here beneath the Hit it Here
16 Cafe, and I wanted to know if Mr. Terry had an opinion with
17 respect to the comparability of those seats.

18 A Excuse me. I was looking at the wrong section when you
19 put that up.

20 The first section, I did know about wheelchair seats
21 behind there. I did not do an analysis of those.

22 Q (By Mr. Willey) Okay. Fair enough.

23 Is that true also for this section here?

24 A What are those section numbers?

25 Q 105 through 110.

1 A I did not do sight-line analysis from there. From the
2 ones that are in this area in the outfield, I did not do
3 sight-line analysis of that due to time restrictions.

4 Q And these are shorter sections in the bowl?

5 A Sorry?

6 Q Shorter, narrower sections, fewer rows of seats than the
7 bowl, generally?

8 A Yes, front to back, there's less distance.

9 Q Got it.

10 A Now, the mark that was down on the bottom of the screen
11 here, is that mark -- were you asking me something there?

12 Q No. That's my hand bumping into it inadvertently.

13 A Okay. No problem. I just don't want to miss anything I'm
14 supposed to...

15 MR. WILLEY: If we could look at Defendants'
16 Exhibit 161, please, Rondi?

17 Excuse me. Plaintiffs' Exhibit 161.

18 Q (By Mr. Willey) This is a chart you prepared, Mr. Terry;
19 is that correct?

20 A Yes.

21 Q And this is a chart that is depicting some analysis you
22 did with respect to your review of tickets available on
23 TicketMaster as of April 16, 2019, for the game dated
24 May 28th, 2019, right?

25 A That's correct.

1 Q All right.

2 So your analysis here is predicated on a single game?

3 A Partly.

4 Q Right.

5 And when I asked you in your deposition if there was
6 any other game that you could identify that was part of this
7 analysis, you could not, right?

8 A What you asked me in my deposition was whether I knew the
9 ticket availability for specific games, and you quoted
10 particular dates and wanted to know if I knew those -- what
11 was the availability in those games. The way I recall the
12 deposition, and I couldn't tell you, on any particular game,
13 what that -- what that information was.

14 I did tell you, in my report -- I realized that I did give
15 you some specific dates in my report that I couldn't recall
16 during my deposition.

17 Q But you don't have an analysis with respect to ticket
18 availability, apart from this chart here that's Exhibit 161,
19 plaintiffs', right?

20 A Detailed analysis of ticket availability, apart from this
21 chart? This chart really doesn't show ticket availability.
22 This chart is what we used to count the number of tickets.
23 Because there was a difference between the seating manifest
24 that we'd been given, numbers that we'd been quoted, and what
25 was actually showing up on TicketMaster. And so in this

1 chart, what we tried to do was to reconcile the differences.

2 Now I understand that ticket availability differs;
3 somebody breaks a seat, that one is no longer available;
4 there's a seat that's held for trouble. There are all kinds
5 of things that change those numbers. But we were trying to
6 find out did you meet the minimum number, and we had to count
7 the stadium, and so we did that. That's what this chart was
8 for. This was not about availability.

9 Q And you had testified earlier today about whether or not,
10 when a ticket buyer would go on TicketMaster to seek an
11 accessible seat, and there may not have been one, that they
12 were not -- I think you used the phrase "not practically
13 available"?

14 A Yes.

15 Q And when they're not practically available, that's because
16 someone else bought the ticket, right?

17 A It's hard to know.

18 Q Well, but that's the most plausible outcome, right? If I
19 go to TicketMaster and I want to buy a seat and the seat is
20 not available, the most likely scenario is because someone
21 else bought it, right?

22 A That's the most common reason for it.

23 Sometimes front-row seats are held out for -- you
24 know, high-end seats are held out for, you know, celebrities
25 that want to come to a game. So it's hard to say that

1 they've actually been bought, but that is the most common
2 reason for it.

3 Q Right.

4 MR. WILLEY: Rondi, let's look at Exhibit 162. This
5 is Plaintiffs' Exhibit 162.

6 THE COURT: Plaintiffs'?

7 Q (By Mr. Willey) You had looked at this chart with
8 Mr. Connor, and I believe you were looking at the
9 availability of season-ticket packages and group packages,
10 or, rather, different pieces of season-ticket packages as of
11 April 28th, 2019; is that right?

12 A That's correct.

13 Q So if you had run this search on January 1 of 2019, you
14 would have had different results, right?

15 A I would expect it to.

16 Q Right.

17 And if you'd run it on November 30th of 2018, when the
18 tickets were initially on sale, you would have had different
19 results?

20 A That's true.

21 Q So this doesn't tell us whether or not there were
22 wheelchair seats in season-ticket packages, does it?

23 A It tells us something about that. It does not tell us
24 everything that we would need to know to do a thorough
25 analysis, but that would also require computer programs.

1 Q Sure.

2 And we'd want to look at more than one date and more
3 than one section, right?

4 A I would want to look at further-back information than that
5 to be able to get a good idea of it, but this is -- all we
6 had access to was what we knew at the time.

7 Q Sure.

8 And one date in April, and looking at certain sections,
9 right?

10 A That's correct.

11 Q So just looking at this chart, it is -- on the left-hand
12 column, we have Sections 124, 125, 129, right?

13 A Yes.

14 Q And you didn't know and check if there was something
15 available in 128?

16 A That's correct. These are the seats that we did the
17 sight-line analysis, just to give us a limited section;
18 otherwise, we would have ended up with something -- a
19 spreadsheet the size of the one we just looked at.

20 Q I understand entirely.

21 Even as of the date of this particular inquiry --

22 A Yes.

23 Q -- the information depicted on this exhibit is not
24 representative of the stadium as a whole; it only depicts
25 those sections?

1 A That's correct.

2 Q Okay.

3 And so if we wanted to know about what
4 wheelchair-accessible seats were available as of April 28th
5 in season-ticket packages, this doesn't tell us, except for
6 with respect to the sections listed?

7 A No. This is a sample -- what I tried to get was a
8 representative sample of places where we could see what the
9 sight lines were.

10 Q Have you ever designed a stadium?

11 A Sorry?

12 Q Have you ever designed a stadium as an architect?

13 A Designed a stadium?

14 Q Yeah.

15 A I'd have to think back. I've been doing this for 30
16 years, or 29.

17 I have worked on the design of some stadiums as a
18 draftsman for schools, but I have not actually been a
19 designer on a team -- one of the four teams that was
20 designing stadiums this size. Now, I've served as a
21 consultant on the design of a lot of stadiums, at least half
22 a dozen stadiums and arenas that are this size.

23 Q Do you know who the architect was for T-Mobile Park?

24 A I believe it was NBBJ.

25 Q They designed other stadiums?

1 A Yes. They were one of the big four designing stadiums in
2 the '90s, stadiums and arenas.

3 Q And do you have any knowledge as to what NBBJ did in terms
4 of designing this stadium with respect to ADA compliance?

5 A Any knowledge?

6 Q Yeah.

7 A I can see the results of a lot of things that they did.

8 Q With respect to what they were doing at the time when
9 designing.

10 A What their design practices were?

11 Q Yeah.

12 A I don't know what their design practices were at the time.
13 I mean, there are thousands of practices that they would have
14 in designing a stadium like this, and I don't know.

15 Q Fair enough. I just wanted to know if you had any
16 familiarity, and I'm hearing you say you did not, and that's
17 fine.

18 So if we could talk about your sight-line analysis.

19 A Yes.

20 Q And I want to make sure I understand what it is you were
21 doing exactly.

22 MR. WILLEY: If you could pull up Plaintiffs' 3,
23 please, Rondi.

24 THE WITNESS: Which one?

25 MR. WILLEY: It's on the screen in front of you, and

1 it's Plaintiffs' Exhibit 3.

2 THE WITNESS: Three.

3 Q (By Mr. Willey) Do you have it there?

4 A I do.

5 Q So when you were doing this analysis, as I understand it,
6 you were having yourself in a wheelchair seating location
7 with a camera; is that right?

8 A In the left-hand photograph, yes.

9 Q Right.

10 And then you're having your assistant stand in front of
11 you, holding up rulers or extended yardsticks?

12 A That's correct.

13 Q And then you're taking these pictures. And when you're
14 doing this analysis and trying to show or visualize, in some
15 way, what a spectator might see, are you populating this with
16 the heads of spectators? In other words, when I'm in a
17 stadium and I'm sitting in a seat, my view is their heads and
18 shoulders in front of me in various angles. Are you doing
19 that here?

20 A The line shown on the top -- the upper line shown here
21 that has "head," that is the heads of people. It represents
22 the head of an average-height spectator standing two rows in
23 front of the wheelchair user. The line below that, that says
24 "shoulder," represents the shoulders of people, ignoring the
25 heads, recognizing that they may be there -- they will be

1 there, hopefully -- but recognizing that that's the line of
2 the shoulder. So it's assuming that you're looking over the
3 shoulders and between the heads of the people one row in
4 front.

5 Q This is not being populated, though, with human,
6 mannequin, or like figures to show how spectators actually
7 sit, is it? In other words, there are no spectators here.
8 You're simply drawing a line, right?

9 A Yes.

10 Q And the same is true up here. In other words, you're
11 drawing this line, and then you're saying there is no vision
12 here at all. That's what you're saying, right?

13 A I'm saying that anything below that row of heads on the
14 second row, forward, is to be assumed to be blocked, and
15 that's because that's what the technical assistance said to
16 assume. It said you're looking over the heads of the
17 people -- over the shoulders of the people one row forward,
18 ignoring the heads, knowing they're going to be there, but
19 over the heads of people two rows in front.

20 Q But if we had heads here -- right? -- you would see more
21 of the field, wouldn't you? In other words, you've put up
22 just a wall, and, in fact, real life is there are heads in
23 there, right?

24 A I could have shown a drawing here -- and I've seen another
25 person actually put some little cutouts of people in front.

1 I could have shown that here, but that's noise in that it
2 doesn't tell you what the documents told you to calculate
3 based on.

4 So what I looked at was, I tried to show you how the
5 standards told you to do that analysis, not the noise of all
6 of the various places that people could have been standing.
7 There's a little -- these are a little out of scale, and they
8 ignore the people whose heads are between the ones that
9 you're looking at there. So it's -- what I tried to do was
10 just pare it down to what the standard said to look for.

11 Q I understand, but there's no reg that tells you to do what
12 you've done here, though?

13 A There's no reg that tells you how to illustrate it.

14 Q Right. So you chose to do it by putting up a wall, and
15 could have also chosen to do it by doing heads, right?

16 A I chose to do it in a way that represented what the
17 technical assistance was interpreted to require, and to
18 filter out the noise of all the other kinds of things.

19 Q When you say "the technical assistance required," you're
20 referring to what?

21 A Over the shoulders of people one row in front and over the
22 heads of people two rows in front, if that is what the other
23 people in this area were able to see. So, again, in this
24 particular location, it's over the shoulders -- the people in
25 the rows in front, that's the kind of sight lines they were

1 given. So for the wheelchair user, I tried to do a
2 comparable analysis of that.

3 Q Right.

4 And just so we're clear, if we're looking at the
5 percentage of the field that one is viewing -- right? -- if
6 you had done the work with different heads, like I'm showing
7 here, you would have had a greater percentage of field view,
8 right?

9 A I'm sorry?

10 Q Do you not understand my question?

11 A I don't, because -- I would have had a greater view of the
12 field? I mean, it depends -- if you're talking about a
13 re-imagining of a real crowd of people who are not all the
14 same height, then, yes, you would have different views,
15 depending on whether you're sitting behind a bunch of kids or
16 a bunch of Texans with their hats on or -- I mean, you would
17 get that kind of noise in front of you, and that's expected.
18 But the stadium designers, what is expected by the standards,
19 is that you are designing for average-height people. So your
20 obligation is to give comparability in the design of this so
21 that when it's populated by the various types of people that
22 would be there, you've still have comparability. Anybody
23 sitting in any of these seats could have Texans with hats on
24 in front of them.

25 Q I'm not asking about Texans. I'm actually just getting at

1 the differentiation between, for example, average-height
2 people with actual heads versus a wall in the analysis.
3 That's all.

4 Let me ask you this: When you're talking about the
5 regs that require this, you're consistently going back to the
6 Accessible Stadium document. That's the reference we're
7 talking about, right?

8 A The Accessible Stadium document and the Title III
9 Technical Assistance Manual supplement in terms of the types
10 of things that they were talking about, that you had to have
11 sight line over standing spectators.

12 Q The 1994 TAM supplement and the 1996 *Accessible Stadiums*,
13 right?

14 A Yes, that's what we're talking about.

15 Q Okay.

16 And the 1994 TAM supplement indicated that one of the
17 ways to comply would be to put people at the back of the
18 viewing section with some elevation, right?

19 A Yes.

20 Q And that's what NBBJ did here?

21 A Almost.

22 Q Well, they did it. I mean, you're telling me 20 years
23 later you disagree, but that's what they did, right?

24 A They elevated the platform, but they didn't elevate it
25 enough to provide comparability.

1 Q In your view?

2 A I don't see that it's really so much of an opinion. It's
3 a question of what do the numbers show. It's a fact, and
4 it's an opinion about those facts.

5 MR. WILLEY: Rondi, if we could look at that same
6 exhibit again, and then follow that with Exhibit 4. These
7 are Plaintiffs' Exhibit 3 and 4.

8 Q (By Mr. Willey) So this is Plaintiffs' Exhibit 3, minus
9 my red marks.

10 In this document, we have the wheelchair-user view, and
11 you're showing that -- that over the shoulder, a hundred
12 percent view of the field, and over the head, there's a 53
13 percent view of the field; is that right?

14 A Are we on Attachment B1?

15 Q Attachment B1.

16 A And tell me where you're reading.

17 Q I'm reading your numbers here. So --

18 A These numbers right here?

19 Q Yes.

20 A Okay. All right.

21 Q So this is showing that, in this picture, the
22 wheelchair-user view has a hundred percent view of the field
23 over shoulders, right?

24 A Yes.

25 Q And this picture, you're calculating that when you put the

1 wall up here, you have 53 percent view of the field, right,
2 the entire field?

3 A Fifty-three percent of the entire field, yes.

4 Q And if we do the comparison on the right side -- right? --
5 over the shoulder we have a hundred percent here, and over
6 the head, we have 73 percent of the entire field, right?

7 A That's correct.

8 Q Is that comparable?

9 THE COURT: Is that what?

10 Q (By Mr. Willey) Comparable, in your view.

11 A Because I can't see the home plate, and I can't see the
12 slide going into home plate, it's not comparable, in my view.

13 Q Got it.

14 So is it home-plate based?

15 A It is based on watching a baseball game. And a lot of
16 stuff happens at home plate, so that's comparability, as far
17 as I'm concerned. It's important to be able to see the
18 action, particularly that action.

19 Q What if the action is in the infield?

20 A Then I can see that.

21 Q Okay.

22 What I'm trying to understand is, is the 53 versus 73
23 percent comparable?

24 A If you look at the calculation of the infield, not the
25 entire field, most of the action typically occurs in the

1 infield. The infield is a hundred percent over the heads for
2 all standing spectators, all members of the general public
3 can see all of the infield and all the places that I looked
4 at. It's only wheelchair users who have significant portions
5 or important portions of the infield blocked.

6 Q Well, let me just ask you, then, about the infield here.

7 Eighty-three versus a hundred percent, is that
8 comparable?

9 A Depends on which percent it is that you're missing.

10 Q Well, it sounds to me what you need to be doing, in your
11 view, is you do some sort of seat-by-seat analysis all the
12 way around, right?

13 A Which is what the designers would have done --

14 Q I'm only trying to understand your position.

15 A Yes, my position is that you do comparable for wheelchair
16 users what you do for everybody else in that area.

17 Q So in your view, what would be comparable here in these
18 seats is different than what would be comparable in a
19 different section?

20 A Absolutely.

21 Q Got it.

22 So you would have a different, sort of, comparability
23 analysis all the way around?

24 A Because the comparability is what other people in that
25 area get to see. So if you're paying for the nosebleed

1 sections, and you have a different set of viewing angles up
2 there in those \$20 seats, then that's the kind of viewing
3 angle that you're required to provide for wheelchair users.

4 If you've got the multi-hundred-dollar view from the
5 Diamond Club, then you need to give everybody the same kind
6 of view for, kind of, where they are. Give people the
7 options.

8 Q I understand. I guess what I'm trying to understand,
9 then, is, you would say that your analysis of comparability
10 is not really based upon this percentage analysis; it's,
11 rather, based upon looking at the specifics of each seat all
12 around the stadium?

13 A It is looking at the seats that are in that area,
14 comparability for other seats in the area. So the photograph
15 on the right is taken from a seat just ahead of the one row
16 ahead of the wheelchair user, and this shows what they can
17 see.

18 Q Okay. Well, let's go to Exhibit 190 -- excuse me --
19 Plaintiffs' 4.

20 Okay. So this is now a comparison of two seats in the
21 section next to it?

22 A Yes.

23 Q Right, that are not wheelchair seats?

24 A That's correct.

25 Q Okay.

1 And in this picture, the person in the
2 general-admission seat on the left has a 42 percent view of
3 the field?

4 A Of the entire field, yes.

5 Q Right?

6 And the other general accessible person on the right
7 has a 65 percent view of the entire field?

8 So each of these non-wheelchair users has an impaired
9 view of the field as well, right?

10 A That's correct.

11 Q And so would you say, then, that this section here is
12 comparable -- the wheelchair-accessible seating in Exhibit 3
13 that we just looked at is comparable to what's been shown
14 here?

15 A Exhibit 3 that we just looked at?

16 Q Yeah. Does the wheelchair, in your view, have a
17 comparable sight? Because we've got a 53 percent view of the
18 field there; here, you've got somebody with 42 percent in a
19 general-admission seat.

20 A I would not say that you base comparability on the entire
21 field. You base comparability on a whole series of things
22 that a spectator, who is there to watch the game, is
23 interested in. Most spectators are interested in seeing the
24 places where the action occurs. So if I'm limiting -- if I'm
25 looking at where I would consider comparability important, I

1 would be looking first at the infield, and then I'd be
2 looking at, well, what else is blocked or what else is
3 obscured, and what kind of trade-offs are in -- in looking at
4 that.

5 It was interesting in this -- in doing this review, that
6 all of those standing spectators could see all of the
7 infield. I would expect a designer to make sure that that
8 could happen. But then recognizing that, you know, the
9 location of the dugout if you're down close, the location of
10 other kind of things will block certain parts of your view.

11 So I'm looking at all those numbers to decide what I
12 believe would be comparable. But the key indicator here is
13 that the infield, where those views are most critical to most
14 baseball fans, you don't have comparability.

15 Q And so I just want to make sure I understand.

16 Your view is that most baseball fans want to see the
17 infield and not the outfield?

18 A No, they want to see the outfield. They want to find out
19 if that fly ball got caught or not.

20 Q And so, really, you're telling us, though, that we should
21 not be looking at the entire field comparisons?

22 A I didn't say that. What I said was, you look at all of
23 these things together, not just one of them independently.

24 Q Well, let me ask you this: Do you believe that the person
25 sitting in Section 125, Row 11, Seat 8, has a comparable view

1 as the person sitting in Section 124, 41A, Seat 1?

2 A Again, it's one of those gray areas. You've got to look
3 at it and say, is this okay?

4 Now, a person sitting in Row 8 or Row 11, if I remember
5 correctly, is paying a different price than somebody sitting
6 in Row 25, they have a different set of viewing angles.

7 They're closer to the players, they can see other types of
8 things. So comparing those two is not the same as comparing
9 a wheelchair user and a person one row in front. Their
10 viewing angles are much closer together than these.

11 So the comparability between trying to compare two general
12 seats that are way apart from each other is a different set
13 of ticket choices that people get to make when they go to
14 games.

15 So, I mean, if we're trying to do a numerical analysis and
16 say is 42 comparable to 65, well, let's look at everything
17 together and see if it's a reasonable assumption -- I mean, a
18 reasonable thing to do.

19 The higher up you get, the more of the field you see,
20 generally, if you're not blocked, because you've got a
21 bird's-eye view looking down rather than an obscured view
22 looking over walls and looking over people that are standing
23 in front of you or sitting in front of you.

24 Q Mr. Terry, your Exhibit 4 that's on the screen here, this
25 shows us that people in non-accessible seats,

1 general-admission seats in Section 125, in Rows 11 and Row
2 25, have impaired views of the field, right?

3 A Yes.

4 Q Got it.

5 And they have impaired views of the field that is, in
6 percent terms, similar to the person sitting in Section 124
7 or 41A?

8 A No, that's not my testimony.

9 Q I'm not asking you if that's your testimony. I'm asking
10 you what the exhibit shows.

11 A The exhibit shows that the view of the entire field -- I'd
12 have to go back to the one that we just looked at to see what
13 the number there was.

14 When you look at the entire field view for a wheelchair
15 user, the person who is sitting higher up -- again, the way
16 to get a hundred percent view of the field is to fly a drone
17 over the center of the field. The higher you get, the more
18 percentage of the field you'll generally get, unless it's
19 blocked by something. So the higher you move up, the more of
20 the entire field you'll see.

21 So, yes, that's why Row No. 11 has more of the entire
22 field blocked than Row No. 25 does, because it's higher up.

23 Q Row 11 is closer to the field than Row 25.

24 A Excuse me.

25 So the percent visible from Row 25 is 65 percent. The

1 entire field from Row 11 is 42 percent.

2 Q And the entire field from Row 41A is 53 percent?

3 A That's correct.

4 Q Got it.

5 So in this case, the person sitting in Row 11 has a
6 lesser view than the person sitting in Row 41?

7 A Of the entire field, they have a lower percentage than the
8 person sitting in the wheelchair position, because a
9 wheelchair user is higher up and gets a better angle down on
10 the field than the Row 11 seat does for the entire field.

11 Q Right.

12 And there are, then, seats in the bowl of the Section
13 100 level, right? Some of the number of seats in that bowl
14 have lesser impaired views than the people sitting in Row 41,
15 right?

16 A Only if you're looking exclusively at the entire field.

17 Q Well, if we're looking at the entire field, then you would
18 agree with me, right?

19 A Yes, that there are -- that there are people who have
20 worse views, than the people sitting in the back of 124, of
21 the entire field.

22 Q Right.

23 And the same would be true if we looked at Section 135,
24 and we compared somebody, say, in Row 11 versus Row 41?

25 A If you're looking only at the entire field, you would

1 generally have -- the higher you get up, the more of the
2 entire field you can see just because of the obstruction of
3 the people blocking the close edge of the field from you.

4 Q Right.

5 And so in this case, what we're seeing here in this
6 exhibit is that if you're closer to the field, you actually
7 have less a view of the entire field?

8 A Of the entire field.

9 Q Right.

10 And so we can draw a band through the Section 100 level
11 of seats that have higher and, therefore, better views of the
12 entire field versus the seats that don't, presumably, right?

13 A I'm sorry?

14 Q Presumably, there is a band you can draw through the 100
15 level, where, above that band, the seats have better views,
16 and below that band, seats have more impaired views, just
17 like here, Row 11 has a lesser view than Row 41?

18 A That's an oversimplification of what's actually happening.
19 So I wouldn't characterize it that way. It's a misleading
20 oversimplification. That's what I wouldn't want to do.

21 Q But I'm saying if you were to go and look at Row 11
22 everywhere you did this analysis, you would likely see Row 11
23 to be impaired differently than Row 41, right?

24 A The view from each seat in the stadium is going to be
25 slightly different, and the type of view changes occur based

1 on a lot of different factors, mostly related to how many
2 people are sitting in front of you, where you're sitting in
3 relation to that, how low you are. And as you move closer to
4 the field, you get a closer, more personal view of what's
5 happening, but you get less a perspective of what's happening
6 on the entire field.

7 So that's why people had to have choices of viewing
8 angles, so that they can pick the type of view they want to
9 have in the stadium so that everybody gets to pick things
10 that they like to see.

11 Q I just want to be clear, then.

12 What you're saying is -- you're testifying that we
13 don't look at the entire field percentages; we should look at
14 something --

15 A No, I didn't testify to that. I said that's one of the
16 factors to look at.

17 Q Okay.

18 And on that basis, then, you would say these seats have
19 comparability?

20 A I'm sorry. Can you restate --

21 Q The seats that are shown in Exhibit 3 and Exhibit 4 are
22 all comparable based upon an entire field comparison?

23 A I wouldn't say that they're comparable to each other;
24 they're --

25 Q Are they not?

1 A -- different.

2 Q Okay.

3 Are they non-comparable, in violation of the ADA, in
4 your view?

5 A I'm sorry?

6 Q Do they not compare in a way that violates the ADA, the
7 1991 regs, in your view?

8 A The seats in Row 11 and 25 are not covered by the ADA.

9 Q Versus Row 41?

10 A They're not covered by the ADA.

11 Q Well, if you're saying Row 41 does not have a comparable
12 view, I'm showing you seats in Row 11 and Row 25, and I'm
13 asking if those have comparable views, in your view.

14 A The ADA says that wheelchair users need to have comparable
15 viewing angles to what's provided for other members of the
16 general public. And so the viewing angles -- there are a lot
17 of different portions of the definition of viewing angles.
18 And so in terms of closeness to the field, these are better
19 than the wheelchair users. So you get closer-up views of the
20 players, closer-up views of the action.

21 The seats in the back, you don't have that kind of option.
22 You don't have that opportunity. The seats in the back, you
23 compare to the other people sitting in the area right next to
24 them.

25 Now, I looked at these seats because I wanted to find out,

1 are there -- the closer you get to the field, are other
2 people losing sight of, particularly the infield, are people
3 losing sight of that. And what I found was that as you got
4 closer to the field, you didn't lose sight of the infield.
5 You lost sight of, primarily, the sidelines.

6 So if you look at Row 11, the side is 20 percent visible,
7 where, only 14 rows back, the side is 38 percent visible, and
8 that's --

9 THE COURT: Wait a minute. Were you saying that
10 sitting in Row 11 or standing in Row 11, and people stand up
11 in front of you, you have a better view of the infield than
12 somebody sitting in Row 25 with people standing in front of
13 them? Is that what you're saying?

14 THE WITNESS: No. In Row 25 and Row 11, you can see
15 all of the blue area that indicates the infield in both
16 images. So both of them have a full view of all of the dirt
17 that makes up the infield.

18 So 111 and 25, it was designed to give both of them a full
19 view of the infield when people are there, standing up.

20 THE COURT: So then you would say they were
21 comparable?

22 THE WITNESS: These two are comparable to each other
23 in their view of the infield. In terms of the sight-line
24 view of what you can see over the standing spectators,
25 they're comparable. But these are non-wheelchair users.

1 Q (By Mr. Willey) Right. And I'm comparing them to the
2 wheelchair user in Exhibit 3.

3 A And when you go back to that wheelchair user, they could
4 not see all of the infield because their elevation had not
5 either been pushed far enough forward to -- they would have
6 lost Row 40, pushed forward enough to be able to have the
7 sight of the people in front of them, or been raised higher
8 to be able to see over the people in front of them.

9 Q I think we understand that you're trying to say, that we
10 look at different pieces for every seat; is that right?

11 A I'm sorry.

12 Q We look at different pieces for every seat, I think is
13 what you're saying.

14 A No.

15 Q No?

16 If we could talk about Exhibit B8, please -- excuse
17 me -- it's Plaintiffs' 10, Attachment B8.

18 Do you recall looking at this, Mr. Terry?

19 A I do.

20 Q And there were two sections, I think, in the Terrace Club
21 that has platforms; is that correct?

22 A That's correct.

23 Q Did you look at the platforms?

24 A I'm sorry?

25 Q Did you look at the platforms when you were at the

1 stadium?

2 A 227 was one of the raised platforms. I did look at it. I
3 looked at platform -- I believe it was in 224, but I'm not
4 sure about that -- the other raised platform, and it was very
5 similar.

6 Q And those platforms both had extended ramps to go up to
7 them, right?

8 A They did.

9 Q Those ramps went along a walkway?

10 A They went between the glass for the cafe in there,
11 whatever it was, a bar, and they went along between that and
12 the back row of seats.

13 Q Do you know if those ramps are ADA compliant?

14 THE COURT: Were what?

15 MR. WILLEY: If those ramps --

16 THE COURT: Were ADA compliant?

17 MR. WILLEY: Yes.

18 Q (By Mr. Willey) Did you test them?

19 A The judge asked me yesterday if I had looked at all the
20 ramps in the stadium, or, at least -- I believe it was all
21 the ramps in the stadium, and I had not looked at all of the
22 ramps, but I did look at those ramps. They were close, but
23 they were not fully compliant.

24 Q And were the platforms themselves compliant?

25 THE COURT: What platforms?

1 A There was enough room --

2 THE COURT: What platforms?

3 MR. WILLEY: The platforms in Section 227 that this
4 exhibit is based upon.

5 A The platforms were a little unusual. They were -- if I
6 remember correctly, there was sufficient width for them to
7 have two wheelchairs and two companions in there. One of
8 them, for some reason, had a fixed companion seat. I
9 probably would have put it in a different location. But I
10 don't remember opining about any problems with those ramps or
11 these platforms.

12 Q (By Mr. Willey) Are you aware that the Mariners installed
13 those platforms for two season-ticket holders that requested
14 them?

15 A I heard that yesterday.

16 Q And are you also aware that the Mariners are taking those
17 out because those ramps are not compliant and the stand of
18 the platform itself are not compliant with ADA?

19 MR. CONNOR: There's no evidence about that, and the
20 record doesn't support that.

21 MR. WILLEY: I'm asking if he knows.

22 A I don't have information about that sufficient to be able
23 to give you any kind of opinion.

24 Q (By Mr. Willey) And the new Terrace Club, you were here
25 when that was testified about, the Terrace Club seating?

1 A The Terrace Club seating? Is that plans for new seating
2 that is supposed to be coming in?

3 Q Yes. Were you here for that testimony?

4 A I heard something about a Terrace Club when I was here
5 yesterday. I was reviewing notes and wasn't really paying a
6 lot attention to what was going on. I didn't see where that
7 was going.

8 Is this the Terrace Club, the area where that renovation
9 is expected to be happening?

10 Q I'm not going to testify, but I was asking if you knew
11 that.

12 A No, I don't know that.

13 Q I want to talk to you a little bit about the pricing.
14 If we could look at the -- I think it's Plaintiffs'
15 191.

16 So this is the map that shows the different seats in
17 the stadium and seating locations, as well as different
18 colors that designate current pricing or tiers or buckets,
19 right?

20 A Okay.

21 Q You're familiar with this?

22 A I've seen lots of drawings like this taken at different
23 times.

24 Q Are you familiar with this one, which has been used here
25 as an exhibit and, I believe, was shown to you previously?

1 A I saw this exhibit.

2 Q Yeah. Okay.

3 So there was testimony that each color here designates
4 a current differentiation of price zone or bucket, right?

5 A Okay.

6 Q Are you aware of that?

7 A What testimony? I didn't hear that testimony. I don't
8 know what the specifics were, so I'm sorry.

9 Q Okay.

10 Well, I think it's been established that this map,
11 which was produced by the Mariners, shows, in the color here,
12 the differentiated price zones for 2019, right?

13 A Okay. All right.

14 Q And these are different price zones or differentiation or
15 tiers that existed in 1999; do you know that?

16 A I would expect that.

17 Q So in 1999, Section 142 had one price?

18 THE COURT: It had what?

19 MR. WILLEY: One price.

20 A I'll take your word for it.

21 Q (By Mr. Willey) Are you aware? There was testimony
22 yesterday about that.

23 A Okay.

24 Q And today there is five price zones in that section.

25 A Okay.

1 Q Well, there was also testimony yesterday that the teams,
2 generally, are moving to more granular and finely
3 differentiated priced tiering, right?

4 A That's true.

5 Q And Mr. Rogel testified, for example, the San Diego Padres
6 had something like 122 price zones last year, and will have
7 something in excess of 300 for the forthcoming season.

8 A I'm not surprised.

9 Q Which means there is a lot of different pricing in the
10 stadium, right?

11 A Yes.

12 Q Is there a requirement that there be accessible seating in
13 every single price location?

14 A Yes.

15 Q Got it.

16 So your position would be, when the Padres move from
17 170 price points to 300 price points, they have to
18 structurally change the stadium to put new seats in those
19 price points?

20 A If it's readily achievable. They are required to do that
21 by the regulations.

22 Q And what regulation would that be?

23 A The Title III regulations.

24 Q Which one?

25 A I believe it's 36.302(f), maybe 36.4- -- I don't have a

1 memory for the section numbers.

2 Q It's all right. I just want to make sure I understand.

3 You're saying that if a team alters the pricing in a
4 section, it must also physically change every seat to make
5 sure that there is accessible seating in every single pricing
6 zone?

7 A No, I'm not saying that.

8 Q Okay. Then what are you saying?

9 A What I'm saying is that the regulations say that you have
10 to provide accessible seats in all of the price points, but
11 you never have to exceed -- and they're supposed to be done
12 in a ratio, they're supposed to be done either at that price
13 point in that zone where that price point is offered, or in a
14 seat that provides substantially equivalent or better viewing
15 angles and amenities. So it's -- you don't have to do it --
16 so if you have 500 price points in the stadium, you don't
17 have to increase the number of wheelchair seats; you just
18 have to give people opportunities that allow them, if they
19 can only afford a \$75 ticket for the game but there isn't
20 anything forward of the \$55 ticket, you need to give them
21 something that allows them to get a better view than a \$55
22 ticket. That's the way the regulations are written. If you
23 give people choices that are comparable, substantially
24 equivalent or better, and that's what the ticket pricing
25 requirements are.

1 Q So I want to change the pricing in the stadium, and I want
2 to move to 100 different price zones.

3 A Yes.

4 Q And do I have to provide accessible seating in each one of
5 those price zones, or do I have to provide a cross of the
6 representative sample of the price zones?

7 A You have to do whatever is readily achievable to do in the
8 stadium to be able to accomplish that. So give people -- you
9 have to do whatever you can that meets the readily achievable
10 obligation. You have to make those physical changes to the
11 stadium to allow you to do what the price choice requirement
12 obligates you to do.

13 Q And you would say this is a readily achievable analysis?

14 A If you're spending \$300 million over the next few years,
15 or however many years it is, it sounds like there's money
16 available to do it.

17 Q I'm actually just asking you the standard you're opining
18 on, sir.

19 A I have not done a financial analysis --

20 Q No, no, no. I'm actually not asking about the analysis.
21 The standard, you say it's readily achievable. That's the
22 standard?

23 MR. CONNOR: Your Honor --

24 A Okay. The regulations --

25 MR. CONNOR: Your Honor, can I object? I'd like

1 Mr. Willey to clarify what he's asking the standard is for
2 what -- if he can be more precise.

3 MR. WILLEY: I'm actually trying to follow up on
4 Mr. Terry's testimony.

5 THE COURT: I don't understand the objection.

6 MR. CONNOR: Your Honor --

7 THE COURT: Are you confused?

8 MR. CONNOR: I'm confused.

9 THE COURT: Me, too. Just rephrase, and try to be
10 more specific.

11 Q (By Mr. Willey) The Mariners have something like 22
12 different price points today.

13 A Okay.

14 Q Right? In 1999, they had something like four.

15 A Okay.

16 Q And going forward in the future, there's the possibility
17 they'll have more price zones. So what I'm trying to
18 understand is, if you increase the number of prices --
19 right? -- price differentiation, are you telling me that
20 means you have to put accessible seats in each one of those
21 price zones, or do you have to have a representative sampling
22 of them?

23 A No. Comparability requires -- if you read the regulations
24 from -- the 2010 regulations that apply to ticket sales
25 prices, those regulations require you to make wheelchair

1 seats available in all price -- in all of the price points
2 that are offered in the stadium. And if, because of the
3 design of the stadium or barriers in the stadium that limit
4 that, you're not able to do that, then you have to provide
5 those wheelchair positions in a substantially equivalent or
6 better location than what is required -- than what would have
7 been required in a zone that you can't get to because there's
8 not a ramp to get there; for example, in some of the areas
9 that is shown in here. So you would have to move those
10 wheelchair positions, that related to that, forward into a
11 better location.

12 Q And so I want to make sure I'm clear here.

13 If the Mariners had complied with pricing seat
14 availability distribution in 1999, when it opened -- right?
15 -- because there were many fewer ticket variations -- just
16 assume that, right?

17 A If every section had the same price point from Row 41 to
18 Row 1 --

19 Q Yeah.

20 A -- if all of those were the same price, then they would
21 have met the price dispersal requirement at that point. As
22 soon as they changed those price points, then they ran the
23 risk of being out of compliance.

24 Q Are you telling me -- I just want to make sure it's clear.

25 So when the team, over the course of years, changes the

1 price of tickets, then they have to go and restructure the
2 seating to meet each ticket price bucket; is that what you're
3 saying?

4 A That depends on the design of the stadium and on what kind
5 of alterations they've done since they built it; to provide
6 the opportunity to make those ticket price changes; to take
7 advantage of the increased demand for the close-up ones with
8 the higher prices; to give the opportunities for wheelchair
9 users to have the same kind of choices that everybody else
10 has on price points.

11 Q Let me just make sure I understand.

12 If I'm looking at this map here, Section 142, 143, 145,
13 it's that blue along the 100 level, third-base side; do you
14 see it?

15 A Yes, I do.

16 Q So if those seats were the same today as they were in 1999
17 but the pricing is different, are you telling me that the
18 Mariners are obligated to somehow put accessible seating in
19 every one of those price zones now?

20 A Let me make sure I understand what you're asking.

21 Are you asking if the lighter blue that's right
22 between the section number and the field, that kind of
23 mid-blue color, if you change that ticket price there, you're
24 asking me if they have to put wheelchair users in that box;
25 is that what you're asking?

1 Q Yes.

2 A The answer is no.

3 Q Do they have to offer a ticket at that price?

4 A They do, they definitely have to offer them at that price,
5 and it cannot be in a worse place than that location. It's
6 got to be in that location or a better place for that price
7 point.

8 Q And this is a function of the 2010 regs, or the 1991
9 standard?

10 A I would say it's in both of them. Choices -- choice of
11 prices that are comparable.

12 Q So you're saying the 1991 standard, if we met it when we
13 opened in 1999, but we changed the pricing of the seats,
14 you're saying the 1991 standard --

15 A Still governed.

16 Q And we have to keep re-upping and changing the seating and
17 the allocations?

18 A Because that's a policy. You didn't have to raise those
19 prices. You've made that, as a policy or procedure, a
20 practice decision that's covered by the regulations. That's
21 not a construction regulation. It has construction
22 implications, but you chose to do that as a policy. You
23 didn't have to change the prices in there. You could have
24 left them all -- you could have raised the price of everybody
25 equally, rather than splitting them out and getting more

1 money off the people up front and less money from the people
2 at the back. But that's not what you chose to do.

3 That policy decision is discriminatory, according both to
4 the 1991 standards and the regulations and the 2010
5 regulations. The 2010 regulations just kind of explain that
6 in more detail.

7 Q Is there a particular regulation you would point to that
8 was applicable when this stadium was designed and when it was
9 opened in 1999 that you're talking about now?

10 A It said comparable admission -- choice of admission prices
11 as those available for members of the general public.

12 Q So you're going back to Section 4.3.33?

13 A Yes. That's where it was at the time.

14 Q Okay.

15 MR. WILLEY: Your Honor, I think I may be concluded.
16 I just want to check on something here.

17 THE COURT: Sure.

18 Q (By Mr. Willey) Mr. Terry, you were a consultant for the
19 49ers?

20 A I did a plan review on the schematic design drawings and
21 the design development drawings for the architect on the
22 49ers' stadium.

23 Q And they were subsequently sued for ADA violations of that
24 stadium.

25 A They were.

1 THE COURT: Speak slower.

2 Q (By Mr. Willey) I'm just clarifying, Mr. Terry. You were
3 a consultant for the 49ers for plan-review purposes for ADA
4 compliance?

5 A For the first two phases. We did not do plan reviews on
6 the second -- on the construction -- well, we did plan
7 reviews on the construction documents, but they would not
8 agree. They wanted to make us liable for everything wrong
9 with the stadium under the ADA, and we knew there were things
10 wrong, so we would not take their liability and did not
11 finish the project out.

12 Q But you consulted and you were are a fact witness in that
13 lawsuit?

14 A I was a fact witness in that lawsuit.

15 Q And you had consulted to the stadium for plan review, and
16 then when built, there was alleged ADA violations, right?

17 A Yes.

18 Q And that was a difficult process, right?

19 A A difficult process? In what way?

20 Q To ensure, as you went through your plan review, that all
21 the ADA issues were complied with.

22 A I don't believe there was ever any pretext that all of the
23 ADA issues would be fixed as a result of our plan review.
24 Our job was to identify the things that they were designing
25 into the drawings that were violations of both the ADA and

1 the California accessibility requirements. We did that. We
2 performed our job. There was never any question about that.
3 They just wanted us to give liability for all of their
4 construction problems and their obligation to do things that
5 they didn't do. They wanted to give us that obligation. I
6 wouldn't sign that contract.

7 MR. WILLEY: Thank you for testifying.

8 REDIRECT EXAMINATION

9 BY MR. CONNOR:

10 Q Mr. Terry, I want to start by talking about the 2010
11 regulations regarding prices. Okay?

12 A Okay.

13 Q I think you told Mr. Willey you didn't remember the
14 precise language of that regulation, and I'd like you to look
15 at Plaintiffs' Exhibit No. 235.

16 MR. WILLEY: Your Honor, we'll object to this
17 exhibit.

18 MR. CONNOR: I'm not moving for its admission. I'm
19 asking if this would allow him to refresh his recollection as
20 to what the specifics are of the regulation that he was asked
21 about by Mr. Willey.

22 THE COURT: Which exhibit?

23 MR. CONNOR: Exhibit 235, Your Honor.

24 MR. WILLEY: Your Honor, this is a supplemental
25 report that Mr. Terry produced on September 28th, 2019. We

1 would have moved in limine to exclude it, but it was
2 submitted to us after we filed our motion.

3 THE COURT: As I understand it, he's not moving to
4 admit anything. He just wants him to read the regulation
5 because --

6 MR. CONNOR: Correct.

7 THE COURT: -- he wants to get the right language.
8 There's a paragraph there he's going to read. He can read
9 it.

10 Q (By Mr. Connor) Mr. Terry, I think you told Mr. Willey
11 you thought it was regulation 36.302(f), correct?

12 A Yes.

13 Q Could you -- and I don't know if the court would like him
14 to read it.

15 THE COURT: We'll both read it together, to
16 ourselves.

17 MR. CONNOR: Okay.

18 THE COURT: I think he just wanted you to read that
19 paragraph.

20 THE WITNESS: Yes.

21 Q (By Mr. Connor) Is that the paragraph that you're
22 addressing, in part, in terms of the pricing regulations?

23 A That paragraph, plus the ticket-sales document that the
24 Department of Justice put out. But that's the basis for what
25 I'm referring to.

1 Q Okay. And let's talk about the other document you
2 referred to, the ticket-sales document put out by the
3 Department of Justice.

4 Can you tell the court what that was and when it was
5 issued?

6 A After the standards came out but before they went into
7 effect -- I believe it was before they went into effect,
8 Justice came out with further explanation for how you would
9 apply those regulations when you were selling tickets.

10 So the ticket-sales regulations are written in legal
11 language. The ticket-sales regulations are written in more
12 legal language. The ticket-sales book or document that was
13 published by Justice in 2011 was an attempt to make that
14 clearer, more easily usable by somebody who was actually
15 doing work in the field than in having to go back and read
16 the regulations. So it is more examples of things like that.

17 Q Did that document address what was to be done in terms of
18 pricing and the location being better or comparable?

19 A Yes, it does.

20 Q Okay.

21 And can you tell us what it said in that regard?

22 A What it said was that you can't set the accessible ticket
23 pricing higher in an attempt to spread the comparable -- the
24 ticket prices across all of the choices. In an attempt to do
25 that, you couldn't put wheelchair users that were paying the

1 higher price in a zone that had a lower price. So you
2 couldn't take somebody that was buying the \$125 ticket and
3 put them in the \$55 ticket zone, or the \$75 zone, put them in
4 the \$55. You had to put them in a place that was at a nearby
5 or similar accessible location.

6 So the two pieces of that are, you've got to make the
7 tickets available at all prices, and it can't be worse than
8 the other people who are paying that price. It's got to be
9 that good or better.

10 Q Okay.

11 A In a similar location, meaning if it's an outfield seat,
12 you can't put them -- or if it's an infield seat, you can't
13 put them in the outfield. You've got to do something that's
14 a similar kind of experience.

15 Q Okay.

16 Mr. Terry, I also wanted to ask you: When Mr. Willey
17 was questioning you about what was promulgated by the
18 Department of Justice with respect to comparable lines of
19 sight at the time the stadium was constructed or designed,
20 had the Department of Justice promulgated the ADAAG manual?

21 A The ADAAG was from the Access Board, and that came out in
22 1998.

23 Q Okay.

24 A The technical assistance behind it was pretty consistent
25 leading up to that. If you called their hotline, you'd get

1 the answers they were putting in that book. That book took a
2 while to write.

3 Q Okay. And did -- had that -- I'll skip that for now.

4 Mr. Terry, I want to ask you about these pictures --
5 and I'll try to make it brief -- that we looked at. Let's
6 look, if we could, at, for example, Plaintiffs' Exhibit 11.

7 Putting aside the percentages of the view here, this
8 picture depicts what can be seen of the field by the
9 seated -- the wheelchair user over standing spectators and
10 the non-wheelchair user, correct?

11 A Yes.

12 Q What's not covered in some sort of coloration is what can
13 be seen, correct?

14 A Yes.

15 Q I misspoke.

16 What is colored is what can be seen -- I'm confused.

17 A Is that not what you said?

18 Q I think I said the opposite. Just to make sure.

19 THE COURT: I thought it was what you said.

20 THE WITNESS: Okay. We'll take it.

21 Q (By Mr. Connor) And so simply put, irrespective of the
22 percentages, the wheelchair user, if you make assumption
23 about the standing spectators, could not see home plate or
24 third base in this view, correct?

25 A That's correct.

1 Q All right.

2 I also want to ask you about the percentages. Let's go
3 back and look at -- let's look at -- let's look at Exhibit 4,
4 if we could. I want to go through this, because I think we
5 may have confused the judge.

6 This exhibit would suggest that these two -- and these
7 are both non-accessible seats, correct?

8 A These are general-public seats.

9 Q So they would suggest that, of the entire field, the
10 person sitting in the seat identified on the left could only
11 see 42 percent of the entire field, correct?

12 A This is somebody standing in that location. So this is a
13 standing image.

14 Q Correct. But -- oh, I'm sorry.

15 A If you're sitting, you actually have less -- you can see
16 more of the field.

17 Q Okay.

18 But, here, what I want to clarify is, although our
19 exhibit says 42 percent, somebody standing in that position
20 could literally see the entirety of the field that's colored
21 in, correct?

22 A Yes.

23 Q Okay.

24 There's something to do with the artifact of the -- the
25 percentages that has to do with, sort of, the tilt, correct?

1 A The tilt? You mean how high above the field you are?

2 Q Right.

3 A Yes.

4 Q So does it seem likely that somebody sitting in this or
5 standing in that seat could see a play that's occurring in
6 the infield?

7 A Yes.

8 Q And could see a play occurring in the outfield, correct?

9 A In the outfield beyond the infield, yes.

10 Q Okay.

11 So because the angle is tilted in terms of the
12 percentage of the screen this is taking up, only 42 percent
13 of the field can be seen from that perspective, but, in
14 reality, somebody in that position could see everything
15 occurring above the line, correct?

16 A Yes.

17 The percentages are calculated on the screen on the
18 image. It's not a square footage of field that you can see.
19 It's the percentage of the view that would be available to
20 you if there was nothing blocking it. So it's that -- it's
21 the percentage of what you see here, not the percentage of
22 the whole field.

23 Q Okay.

24 And so a person in this position, even though on the
25 screen they're seeing this percentage, from the picture, it

1 indicates that they can see everything occurring on the
2 field, correct?

3 A You couldn't see what was -- like a foul ball, you could
4 see -- if it's a pop fly that's infield, in bounds, you could
5 see it, but if it's pop fly that lands close to you in that
6 area that's blocked by the diagonal lines, you couldn't see
7 that part of the field.

8 Q Okay. But you could see everything occurring above what's
9 colored in, correct?

10 A Everything within the foul lines, you can see from this
11 location.

12 Q Okay. Above the line that's here?

13 A Yes.

14 Q Okay. Mr. Willey was making a point that I want to
15 discuss with you.

16 He talked about the fact that, in reality, there
17 wouldn't be a wall; there would be a number of heads instead
18 of a wall, correct?

19 A That's correct.

20 Q So to the extent we were looking at this in terms of
21 percentages, Mr. Willey was correct that it wouldn't be that
22 entire percentage blocked out at any given moment, correct?

23 A Right. This attempts to show what is required by the
24 standards. It does not attempt to show what might happen at
25 any given instance during a game.

Q All right. Let me ask this a different way.

Does this show the potential for what would be obscured at any point in time?

A Yes.

Q Okay.

So maybe some points wouldn't be obscured, but this shows where, potentially, they could be obscured, correct?

A That's correct, according to the way the standards are written and interpreted using Dreyfuss numbers and all those kinds of details.

MR. CONNOR: Okay. I think that's all I have. Thank you.

RECROSS-EXAMINATION

BY MR. WILLEY:

Q For the sections that you looked at, Mr. Terry, you did the sight-line analysis. Do you know, for those seats, how many games in 2019 there was a spectator in front of them?

A I'm sorry?

Q Do you know, in 2019, how many times there was a spectator in any of these seats in front of the sections that you're looking at here?

A I do not.

Q If you were sitting in front of Row 41A in Section 100, and you're five-foot-four, do you have similarly barred and blocked space?

1 A Five-foot-four to top of head versus five-foot-seven to
2 the top of head, it would be pretty close, assuming you're
3 looking over an average-height person.

4 Q So that person there has an impaired view in a similar
5 fashion to somebody who's on a platform up above them?

6 A That's right. But it's not based on their disability,
7 it's based on their height.

8 Q You're familiar with the flex seating at T-Mobile Park?

9 A Is that where you put 33-inch wheelchairs and 33-inch
10 companions?

11 Q It's where the fixed seating is removed to create the
12 option of varying patterns of wheelchairs versus companion
13 seats.

14 A I know they're doing that.

15 Q So, I think, with one exception, all of the accessible
16 seating in the park is that way.

17 THE COURT: All the way?

18 Q (By Mr. Willey) All the accessible seating in T-Mobile
19 Park is that flex seating, which is to say no fixed seats,
20 spaces that you could put either a wheelchair or a companion
21 chair in, depending on the configuration. Do you understand
22 that?

23 A That's what it looked like when I was there.

24 Q And if you were to be in the wheelchair space for the
25 purposes of your analysis here, and you were to move two

1 inches to the left, does that change these numbers?

2 A No.

3 Q Not at all?

4 A Not at all.

5 Q And even if you have the human heads, not the wall here?

6 A I'm sorry?

7 Q If you were to do your analysis using human heads instead
8 of a wall drawn across the picture, if I move to the left or
9 to the right, you're telling me that doesn't change the
10 analysis?

11 A No, it does not change the analysis because the analysis
12 is based on the assumption that people could be standing
13 anywhere on that row in front of you, and you have to be able
14 to see over their heads two rows in front of you. You have
15 to be able to see over the heads at that point. And the
16 assumptions are not based on -- either for the designer who
17 is designing all the seats in the stadium, or for the person
18 who's designing the wheelchair seats, those are based on
19 assumption that people are moving all over the place.

20 Q Is your analysis based upon there being staggered seating
21 as the rows go down? In other words, are you assessing this
22 to be that the person in the row in front is centered on the
23 wheelchair user's seat, or to the side, staggered?

24 A I took my measurements behind the numbered seating
25 location from what would have been the center of the eye

1 point of the wheelchair user if they were parked in the space
2 that was designated for them.

3 As to whether you actually had staggered seating in front
4 of them or not, that's a concept, particularly in a baseball
5 stadium, where, if you're trying to get in between two heads
6 in front of you, then you could see what's between those two
7 heads and over the heads of the people in front of that, but
8 you're also trying to see play on a wide field. So there,
9 actually, might be multiple heads that are between you on
10 both rows and whatever the action is there.

11 So rather than basing the analysis on where heads might be
12 in front of you, other than the height, I've followed what
13 the practice of stadium designers has been for millennia,
14 which is to assume that people are about the same height and
15 that you want the ability to see over the heads, in this
16 particular type of stadium, one row, two rows ahead, and
17 between the heads on that row. And where you're placed
18 horizontally is -- does it affect that calculation?

19 Q Do you know if the seating at Safeco -- excuse me --
20 T-Mobile Park is staggered?

21 A It varies.

22 Q And so you didn't incorporate a staggered-seating analysis
23 for the purpose of your report; is that correct?

24 A I used the standards -- I used the method that the
25 standards require, which is -- now, the technical

1 assistance -- I believe it was the ADAAG manual that talked
2 about between the heads two rows in front and -- or over the
3 heads two rows in front, between the heads one row in front,
4 and over the shoulders one row in front. That was written
5 based on staggered seating, and so I considered that. And
6 that's very helpful if you have a single speaker, whose in
7 front of you and the seats are staggered, you can actually
8 move in there and see that speaker probably the whole event.
9 But in a baseball game, because the play is happening very
10 quickly across a wide portion in front of you, there are
11 multiple heads at various locations. And so the way you
12 apply the design requirements is by assuming that people can
13 be anywhere in that plane, anywhere in both planes, both the
14 one row ahead of you and the two row ahead of you, assume
15 they can be anywhere there and say above this point or below
16 this point, it can be obstructed.

17 And the goal of the design and the comparability analysis
18 that I did treated the wheelchair users exactly the same way
19 that I treated the people who were not wheelchair users but
20 members of the general public.

21 Q And so you did not use a staggered-view analysis. You put
22 the wall in instead to incorporate the idea that somebody
23 could move back and forth in front of you?

24 A Aside from the way I just described it, I've never heard
25 of anybody coming up with a staggered-view analysis in a

1 stadium.

2 You can't stagger all the seats in a stadium like this and
3 get as many tickets as the stadium designers put in those
4 facilities.

5 So I followed the standard practice in this kind of design
6 venue.

7 MR. WILLEY: Those are all my questions, Mr. Terry.
8 Thank you.

9 MR. CONNOR: Nothing further, Your Honor.

10 THE COURT: Well, you may step down, Mr. Terry.

11 THE WITNESS: Thank you.

12 THE COURT: That means you may stay or leave, as you
13 wish. I will tell you, as I said the other day, most people
14 leave, especially after being on the stand as long as you
15 have been.

16 The timing couldn't be better. We are now at our lunch
17 break, and today I think we're going to take a little longer
18 lunch break. So instead of seeing you back here at 2:00,
19 I'll see you back here at 2:30. Okay.

20 Now, what are we going to do? Are we going to your
21 witness, or are we going to continue plaintiffs' case?

22 MR. CONNOR: Your Honor, my understanding is we're
23 going to our witnesses. I believe that what we are going to
24 do is just present one of our clients.

25 THE COURT: Just one?

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1 MR. CONNOR: Yes.

2 THE COURT: Not all four?

3 MR. CONNOR: I spoke with Mr. Willey yesterday, and
4 there is a scheduling issue, which is Mr. Endelman,
5 Mr. Willey's expert, won't be here until tomorrow. So it may
6 be that we'll have a brief afternoon.

7 THE COURT: Oh.

8 MR. WILLEY: And there's -- Mr. Connor and I have
9 been working together, but we were faced with the challenge
10 of who was testifying today and how many plaintiffs would be
11 testifying and so on. And I think that's been in flux and
12 it's being clarified now.

13 Mr. Endelman, we had asked him to be available Thursday
14 and Friday, and so we'll have him here first thing in the
15 morning.

16 THE COURT: But you will finish with him tomorrow,
17 right?

18 MR. WILLEY: Yes.

19 THE COURT: And you will have time for closing
20 arguments tomorrow, right?

21 MR. CONNOR: Okay. Yes.

22 THE COURT: I mean, you can continue, but I'm going
23 to be on a plane on Friday, so if you do, you'll be talking
24 to an empty court. I'm being serious. I think you should
25 aim to continue.

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1 I know it's inconvenient to start earlier, but if you
2 think you need more time, then you ought to think about
3 whether we should start earlier, because we really need to
4 finish with him tomorrow, and we don't want to feel rushed
5 about it.

6 We can always go later with closings, but we've got to
7 bear in mind that we have a court reporter who is human.
8 She's not a machine. She's got to have some reasonable
9 limits.

10 So what do you think? Do you think we can finish with him
11 tomorrow?

12 MR. WILLEY: I believe we can, Your Honor. I don't
13 believe it will be an issue. You should be on your flight.

14 THE COURT: Okay.

15 MR. CONNOR: Your Honor, I have no idea how long
16 he'll take. My concern about cross-examination is, I don't
17 want -- because Mr. Endelman, there were not arrangements for
18 him to be here earlier, I don't want to be precluded from
19 having Mr. Terry testify briefly in rebuttal, if need be.

20 THE COURT: Right.

21 MR. CONNOR: And I still don't think that would take
22 much time. I may not use him, but I want to make sure I'm
23 not prejudiced because Mr. Endelman is not done.

24 THE COURT: You won't be. We'll get everybody on who
25 needs to be on.

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1 I was really half jesting. If I have to stay, I'll stay.
2 But I think we should be able to finish the witnesses today,
3 and, if necessary, we can always do closings by video, unless
4 you're going to be showing lots of exhibits during closing.

5 Think about that. Think about what you anticipate your
6 closings will look like.

7 When you do that, counsel, I think you're going to make a
8 very interesting discovery, which is kind of novel because of
9 the way you've proceeded with your exhibits.

10 Those red lines that you've been putting in and your
11 little red dots and things, they're not there anymore. I
12 mean, it's a little different than it usually is because
13 you've used them, but it's not like drawing a red Magic
14 Marker across them. The marks are gone. Well, some of them
15 you didn't. You can use them if you want.

16 Okay. I'd like you to give some thought during the lunch
17 hour to the idea of starting -- I realize that we have tried
18 to make an accommodation and start at 10:00, but I'm a little
19 worried. I think it's very important that you have an
20 opportunity to put your witness back on, if you want, and I
21 don't want us to be caught short.

22 I'm perfectly willing to start the day at 8:30, and if we
23 end early, that would be nice. Okay? But I'd like you to
24 think about that.

25 I realize that may be a hardship, but I think -- I just

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1 want you to consider that, because we really do -- we may
2 have a long day ahead of us.

3 Anyway, let's all go to lunch, and I'll see you back at
4 2:30.

5 (Court in recess.)

6 THE COURT: Are you ready to call your next witness?

7 MR. CONNOR: I am, Your Honor.

I was wondering if you'd like -- Mr. Willey and I talked about the schedule. I don't know if you want to talk about that now.

11 | THE COURT: Sure. We can do that.

12 Are you sure you haven't found your guy, huh? He's not
13 here, huh?

14 MR. CONNOR: Mr. Endelman is not here.

15 | MR. WILLEY: I wish he were.

16 MR. CONNOR: Your Honor, with respect to that, what
17 Mr. Willey and I discussed was, we would both be amenable to
18 doing closing arguments next week by video, or something like
19 that.

THE COURT: Oh. Okay.

21 MR. CONNOR: And I think that if we did that, we both
22 expect that we would be done with testimony tomorrow.

23 THE COURT: I just want you to know, counsel, before
24 you commit yourself to too much, I really was kidding. If it
25 was necessary for me change my flight, I'd be -- not happy,

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1 but I would do it.

2 MR. CONNOR: No, and I'm certain you would. I just
3 think -- for all the benefits, I think we'll be able to be
4 done tomorrow.

5 But related to that, I do need to request that we start at
6 ten o'clock tomorrow, both because of Mr. Reynoldson's
7 condition and because of our plaintiffs' and clients'
8 conditions. Having said that, I still think we'll be done
9 within the normal course tomorrow.

10 THE COURT: Okay. I just don't want you to feel
11 rushed. That's all.

12 MR. CONNOR: Yes, I appreciate that.

13 THE COURT: If you want to bring your witness back
14 again, I want you to have time to do that.

15 But if we don't have the closing arguments of necessity,
16 that gives us easily an hour and a half --

17 MR. CONNOR: Right, right.

18 THE COURT: -- with a break in between, probably two
19 hours.

20 MR. CONNOR: So that's what we would suggest, and I
21 think it would work out well.

22 The only other thing I wanted to bring up before we call
23 our next witness is, Mr. Willey and I have discussed the need
24 to have all of our clients appear and give, potentially,
25 duplicate testimony.

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1 Mr. Willey has agreed that he will stipulate -- and I'll
2 let him say what he's willing to stipulate to -- but I think
3 it will allow us to only present one of our plaintiffs as a
4 witness, and that's what we intend to do.

5 THE COURT: That's fine.

6 MR. WILLEY: And the issue that Mr. Connor had raised
7 and which I was agreeable to was that we would stipulate to
8 the fact that we will not challenge the standing of the
9 plaintiffs.

10 THE COURT: You're narrowing issues.

11 As long as we're talking scheduling, I should give you an
12 idea of how I think we would proceed after closings. I would
13 probably be asking each side to prepare findings and
14 conclusions, and accompanying the findings and conclusions, I
15 want briefing. Because I can probably put together a list of
16 questions that will give you some guidance. But there have
17 been specific questions raised -- and I'm sure the next day
18 is only going to intensify them -- that I feel the court
19 could use some guidance on. There are questions that have
20 come up in the course of the trial, some of them legal
21 questions that the parties really haven't -- let's put it
22 this way: If they have been briefed, it wasn't sufficiently
23 focused in the manner that the testimony has focused it for
24 the court.

25 So I'm just preparing you; that the case isn't going to be

1 over after your closing arguments.

2 Okay. Is that it?

3 MR. CONNOR: All right.

4 THE COURT: Thank you for working out that business
5 about the stipulation on the standing. That will really move
6 things along. So we just have one witness left today?

7 MR. CONNOR: Yes, Your Honor,

8 MR. TERAKIS: Your Honor, we'd like to call
9 Mr. Clark Landis.

10 CLARK LANDIS, HAVING BEEN FIRST DULY SWEORN,
11 TESTIFIED AS FOLLOWS:

12 THE CLERK: Please state your full name for the
13 record, and spell your last name.

14 THE WITNESS: Clark Landis, L-a-n-d-i-s.

15 DIRECT EXAMINATION

16 BY MR. TERASAKI:

17 Q Good afternoon, Mr. Landis.

18 Can you tell us what city you live in?

19 A Seattle.

20 Q And what is your occupation?

21 A I'm an assistive technology professional, working with
22 folks with disabilities, seating/mobility specialist.

23 Q Is there any training or certification you have for that?

24 A A couple of certifications as an assistive technology
25 professional and then one as a seating/mobility specialist.

1 Q I see you're in a wheelchair today. How long have you
2 been using a wheelchair?

3 A Thirty-nine years.

4 Q And are you a fan of the Mariners?

5 A Yeah.

6 Q How long have you been a fan of the Mariners?

7 A Well, I went to opening season in '77, so I kept going.

8 Q How many games do you, generally, attend per season?

9 A Usually anywhere from five to seven.

10 Q And are you planning on attending any games next year?

11 A Yes.

12 Q So when you go to T-Mobile Park, do you watch the games
13 from your wheelchair?

14 A I do.

15 Q And what was the last game you attended?

16 A Oh, gosh. I'm not sure of the exact game, but I believe
17 it was Texas, in September, but I'm not sure of the date.

18 Q And where did you sit?

19 A The 200 level, 226.

20 Q And how often do you sit in that seat?

21 A Five games a year, at least.

22 Q Have you ever sat on the 100 level of the stadium?

23 A I have. It's been probably 20 years since I've sat on
24 that level.

25 Q And is there any reason you don't sit there any longer?

1 A The group of folks who I get my tickets with decided the
2 very first season of T-Mobile -- or Safeco at the time --
3 that we didn't like those seats because the overhang was so
4 impeding to what we could see, so we moved up to the second
5 level.

6 Q So if you recall when you were sitting on the 100 level,
7 do you recall any spectators in front of you, standing?

8 A Yes.

9 Q And how did that affect your view of the playing field?

10 A Really couldn't see much of the action at all, as far as,
11 like, home plate or them running to first base. I sat on the
12 first-base side.

13 Q Do you recall if you had a view of the scoreboard from
14 your seat on the 100 level?

15 A It's been so long, but if I remember right, I had to kind
16 of duck down to try to see above or below or however around
17 the edge of the second level coming down.

18 Q Was that frustrating to you?

19 A Yeah.

20 Q Do you think looking up the information on the scoreboard
21 in a phone app is a reasonable alternative to get that
22 information?

23 A No.

24 Q And why not?

25 A Well, I think it distracts me from the game, the people

1 I'm with, if I have to continually be checking stuff on my
2 phone. You know, when you're watching a game, you're looking
3 out at the field. You know, you want to be able to just look
4 up and kind of get a big picture of what's going on, and that
5 would be the main scoreboard.

6 Q So you said you now sit on the 200 level, correct?

7 A Yes.

8 Q How is your view from your seat at the 200 level?

9 A So I happen to sit in one of the seats that has a raised
10 platform, and it's a good view of the field, I can lose track
11 of fly balls some, and then in order to see the scoreboard,
12 again, I need to lean down because we lost that view of the
13 scoreboard by being raised up so we could see over the top of
14 people.

15 Q Where else in the stadium have you sat? Just those two
16 locations, or other locations?

17 A I've sat in the Hit it Here Cafe; I've sat up on the 300
18 level.

19 Q Do you think it's important to get a view of the game from
20 different areas of the stadium?

21 A Yes.

22 Q Are there any areas you would like to sit in that you
23 haven't had the opportunity to?

24 A Well, if I really had my druthers, I'd like to be about
25 six or eight rows up from the dugouts, but that's not an

1 option.

2 Q And why haven't you been able to sit there?

3 A There's no disabled seats available.

4 MR. TERASAKI: Derik, can you put up Plaintiffs'

5 Exhibit 6?

6 Q (By Mr. Terasaki) Mr. Landis, do you recognize this
7 exhibit we've put up here?

8 A I do.

9 Q And where do you recognize this from?

10 A From yesterday and today.

11 Q Do you understand what this, kind of -- sorry about the
12 circle around that -- this pink line right here represents?

13 A Yes.

14 Q And what does that represent?

15 A The heads of the people two rows in front of the
16 wheelchair seat.

17 MS. GOHMANN BIGELOW: Your Honor, I'm going to object
18 about whether or not the witness has any personal knowledge
19 or ability to offer an opinion on this exhibit.

20 THE COURT: I don't know where it's going yet. All
21 he said is he knows what the line means. Let's go from
22 there.

23 Q (By Mr. Terasaki) From your recollection on the 100 level
24 and your seats at the back of the 100 level, does this match
25 what the view was like when people were standing in front of

1 you?

2 A I have to say it's been a long time. I just know that my
3 view was obstructed.

4 MR. TERASAKI: Derik, can you put up Exhibit 10,
5 please?

6 Q (By Mr. Terasaki) So you said you sat in Section 226,
7 correct?

8 A Correct.

9 Q From your recollection of the seats you often sit at in
10 226, does this picture fairly accurately represent what your
11 view is from that seat?

12 A Yes.

13 MR. TERASAKI: I have no more questions.

14 THE COURT: I have one. Do you have questions for
15 this witness?

16 MS. GOHMANN BIGELOW: Yes, I do.

17 THE COURT: Why don't you go ahead.

18 MS. GOHMANN BIGELOW: Sure.

19 CROSS-EXAMINATION

20 BY MS. GOHMANN BIGELOW:

21 Q Good afternoon, Mr. Landis.

22 A Hello.

23 Q I believe we met when I took your deposition back in May.

24 A Right.

25 Q So, Mr. Landis, I believe you testified, just a few

1 minutes ago, that you recall sitting on the 100 level; is
2 that correct?

3 A Yes.

4 Q And at your deposition, do you remember telling me that
5 you have sat on the 100 level one time, and that was back in
6 either 1999 or 2000?

7 A Yes; in the Diamond Club seats.

8 Q Have you ever sat in the 100 level in the ADA seats that
9 are directly off the 100 level concourse?

10 A Yes.

11 Q Okay.

12 When did you sit in those seats?

13 A It would have been back in '99 or 2000, shortly after the
14 ballpark opened.

15 Q Okay.

16 And you don't remember which section you sat in when
17 you were in these ADA seats on the 100 level, correct?

18 A I don't remember which section. I know I was on the
19 first-base side.

20 Q Okay.

21 And this would have been before the stadium switched to
22 a flex seating plan; is that right?

23 A I'm assuming so.

24 Q Okay.

25 And by that, I just mean that, at the time you sat in

1 these seats, companion seats were bolted down, as opposed to
2 the folding chairs?

3 A Yes.

4 Q Okay.

5 Do you recall testifying at your deposition that when
6 people in the row in front of you stood, you could see parts
7 of the field?

8 A I don't recall that, but I'm sure that I said that because
9 you can see parts of it.

10 Q Okay.

11 And do you also remember testifying that you could see
12 parts of the field over the heads of the people standing in
13 the row in front of you?

14 A Probably, but I would have been moving around, trying to
15 get a view.

16 Q Okay.

17 And do you remember testifying that you could see over
18 the heads of the persons standing two rows in front of you?

19 A I don't recall, no.

20 Q And you can't recall how tall the person standing in front
21 of you was, correct?

22 A No.

23 Q Or how tall the person was standing two rows in front of
24 you, correct?

25 A No.

1 Q When you attended this game in 1999 or 2000, that was
2 before the HD scoreboard was installed; is that right?

3 A I'm sure it must have been.

4 Q Okay.

5 When you attended that game in 1999 or 2000, do you
6 remember if you were able to see any video monitors from your
7 seat?

8 A I am not sure. Again, it's been a long time. If they
9 were there, I might have been able to see something, but I
10 don't recall if they were there.

11 Q Okay.

12 Do you remember testifying that you were able to see --
13 that you are able to see video monitors from your seat in
14 Section 226?

15 A Yes.

16 Q Okay.

17 And on those monitors, you're able to see game
18 highlights, correct?

19 A Yes.

20 Q And you're also able to see content from the HD
21 scoreboard, like the hydro races and the ball-in-the-hat
22 trick, right?

23 A Yes.

24 Q And it also shows information about players and
25 statistics, correct?

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1 A Periodically.

2 Q Okay.

3 MS. GOHMANN BIGELOW: If I could have just one
4 moment?

5 THE COURT: Sure.

6 MS. GOHMANN BIGELOW: Thank you, Mr. Landis. I'm
7 finished.

8 THE COURT: I have a question.

9 The seats that you have now, you said they were raised
10 platform?

11 THE WITNESS: Yes.

12 THE COURT: From that raised platform, can you see
13 when people are standing? How good is your view?

14 THE WITNESS: I can see right over the top of them.

15 THE COURT: You can?

16 THE WITNESS: Yeah.

17 THE COURT: And let me ask you, because -- getting
18 into the raised platform, is there a ramp?

19 THE WITNESS: There is.

20 THE COURT: Pretty easy to negotiate, hard to
21 negotiate?

22 THE WITNESS: You know, it's steep. It's not
23 something that I want to carry a beverage up or something on
24 my lap. I usually will give that to someone who is with me.

25 THE COURT: But it does get you to a level where you

1 can see --

2 THE WITNESS: Yes.

3 THE COURT: -- over the heads of the people in front
4 of you?

5 THE WITNESS: Yes.

6 THE COURT: I'm not sure I've got a correct picture.

7 Can you see the big board from there?

8 THE WITNESS: I have to lean down.

9 THE COURT: Because of the overhang?

10 THE WITNESS: Yes.

11 THE COURT: Thank you very much. I don't know if
12 I've sparked any additional questions.

13 Okay. Thank you very much, Mr. Landis.

14 MR. CONNOR: Your Honor, as indicated, that's all we
15 have for the day.

16 THE COURT: Okay.

17 So your request was that we start at the usual time, which
18 is 10:00 tomorrow?

19 MR. CONNOR: Yes, Your Honor.

20 THE COURT: And you both agree that if we run out of
21 time, we can do closings, maybe next week, by video?

22 MR. WILLEY: I think we're agreed that we will have
23 enough time tomorrow to get the witnesses in. I don't know
24 that we have enough time for closings, but, regardless,
25 Mr. Connor and I agreed that we would do closings subject to

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1 your schedule, Your Honor.

2 THE COURT: You only have one witness, right?

3 MR. WILLEY: I don't think we're going to have an
4 issue.

5 THE COURT: Okay. Well, counsel, have a nice
6 afternoon.

7 MR. CONNOR: Thank you, Your Honor.

8 THE COURT: See you tomorrow morning. We'll start at
9 10:00.

10 (Proceedings adjourned at 2:55 p.m.)

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C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 21st day of October 2019.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter